

Executive Branch Ethics Commission
ADVISORY OPINION 07-31
December 14, 2007

RE: Do actions of family support services worker create conflict of interest?

DECISION: Yes, unless family support worker abstains from involvement.

This opinion is issued in response to your August 24, 2007 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 19 and December 14, 2007 meetings of the Commission and the following opinion is issued.

You provide the relevant facts as follows. You serve as the Deputy General Counsel for the Cabinet for Health and Family Services ("CHFS"). The Department of Community Based Services ("DCBS") within CHFS employs both social workers and family support workers who provide assistance to clients. A pregnant client of both a DCBS social worker and a DCBS family support worker initially asked the social worker to assist her in finding a couple to privately adopt her unborn baby. The client stated to the social worker that she could not afford another child at this time, and she was not interested in a state adoption. She requested guidance on giving up her child.

During a joint luncheon of social workers and family support workers, the social worker mentioned to the client's family support worker that the client was seeking a private adoption for her child. The family support worker had no contact with the client until the client came to CHFS for a food stamp recertification. The client then shared with the family support worker her plans to have her child adopted privately, and asked the family support worker for guidance, as she had the social worker. The family support worker encouraged the client to keep the child, but the client again stated that she was not financially able. The client then requested the family support worker to adopt her unborn baby. The family support worker explained to the client that they should discuss the matter elsewhere. They then met outside of work and the client stated that she wanted the family support worker and her spouse to adopt the child. The case was then transferred to another family support worker to avoid a conflict of interest.

**EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 07-31**

December 14, 2007

Page Two

You request an advisory opinion on whether or not the actions of the family support worker agreeing to adopt a child of a client in need of securing benefits such as food stamps, etc., creates a conflict of interest. Your concerns are the following:

- (1) *The only reason our family support employee was aware the client was pregnant was through her employment with CHFS. But for that relationship, she would not have known the client was pregnant and would not have been able to arrange a private adoption between client and employee;*
- (2) *CHFS by statute (KRS 199. et sequentia) regulates adoptions; and*
- (3) *There is enormous potential for the client to change her mind about the adoption arrangements and allege she only agreed to allow our employee to adopt her child because our employee threatened to withhold family support benefits from the client if she refused to enter into the adoption arrangement.*

After reviewing an initial draft of this advisory opinion, CHFS still has concerns that the family support worker's action of agreeing to adopt a baby of a client violates sections (1) (a) and (d) of KRS 11A.020, provided below:

- (1) No public servant, by himself or through others, shall knowingly:
 - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
 - ...
 - (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.
 - ...
- (3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

You believe that the family support worker has used her official position to secure a privilege (being selected to adopt a client's baby). You further believe that the information obtained from a client that she is pregnant is confidential information, and that both the social worker and the family support worker would be prohibited from disseminating such information to the public.

You question how the worker can erase a conflict by removing oneself from the case. In other words, you ask why it is permissible for the family support worker to use her official position to gain a benefit and then abstain from involvement. You believe at that point the family

**EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 07-31**

December 14, 2007

Page Three

support worker has already benefited from the conflict of interest. The overall concern of CHFS is that the appearance of impropriety is great when a client asks a social worker or family support worker (both positions which exert influence over clients) to adopt a client's baby.

The Commission believes that merely the fact the family support worker became aware of the adoption request as a result of her employment situation would not prohibit her under the Executive Branch Code of Ethics, KRS Chapter 11A, from adopting the child, unless the fact that the client was seeking a couple to adopt her unborn baby was confidential and not available to the general public. You state that the fact that the client is pregnant is confidential; however the fact that the client was seeking a couple to adopt her child does not appear to be confidential since the client shared the information with her social worker and asked for help in finding a couple. Use of information of which an employee becomes aware as a result of his or her position is not prohibited by the Executive Branch Code of Ethics provided the information is not proprietary information which is not available to the public or is confidential.

Although KRS 11A.020(1) does not appear to directly prohibit an employee of CHFS from adopting a child through a private adoption process, the Commission notes that the family support worker had a working relationship with the client, and thus any interest in adopting the client's future child put the family support worker in a situation that created a potential for conflict between the family support worker's personal interest and her duties in the public interest. The Commission does believe that the family support worker was in a situation that created a potential for a conflict of interest between her private interest and her duty in the public interest when she agreed to discuss adoption of the client's child, while at the same time she exerted influence regarding benefit decisions that could affect the client. However, no information has been provided to the Commission indicating that the family support worker actually used her position in any way to influence the client in order to gain an advantage in the adoption of the unborn child.

Upon knowledge by the family support worker of the client's interest in having her and her spouse adopt the child, the family support worker immediately should have abstained from any matters involving the client **prior to** any discussion regarding such adoption and noted her abstention in writing. The Commission advises that if an employee becomes aware of a situation through his or her official position that is not confidential to the public, he or she is not prohibited from using that information, but in order to remove any potential for a conflict of interest, should immediately abstain from involvement with a client **prior to** any discussion with a client regarding an adoption of a child.

Even though the family support worker did not abstain initially, subsequently upon meeting with the client and agreeing to adopt the future child, she did remove herself as the family support worker assigned to the client and thus removed any **future** potential conflicts of interest between her private interest in this matter and her duties in the public interest at that

**EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 07-31**

December 14, 2007

Page Four

point. The Commission points out that upon removal of oneself, as part of one's official duty, from any future involvement with a client in such a situation serves to remove the potential for any **future** conflicts in such a matter.

Despite the fact that CHFS regulates adoptions by statute, as CHFS has an in-house policy entitled "Employee Adoption or Former Employee Adoption" which governs such employee adoptions, the Commission does not believe that the Executive Branch Code of Ethics necessarily prohibits the family service worker from adopting a child of a CHFS client, although it does prohibit the family service worker from involvement in a matter as part of her official duties that would create a conflict with her private interest. Thus, it advises that immediate abstention from client involvement as part of one's official duty is necessary to avoid any conflicts of interest.

The Commission also advises CHFS to adopt internal policies governing its employees that would prohibit employees who have influence over clients from discussions relating to private adoptions of CHFS clients unless the employee removes him or herself from the client's case prior to any such discussions.

Any potential repercussions as a result of the adoption arrangement do not appear to be under the jurisdiction of the Executives Branch Code of Ethics.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Vice Chair: E. Patrick Moores