

Executive Branch Ethics Commission

ADVISORY OPINION 07-46

December 14, 2007

RE: Does potential Cabinet Secretary need to refrain from decisions relative to contract with Humana?

DECISION: Yes.

This opinion is issued in response to your December 6, 2007 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 14, 2007 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. The recently elected Governor has offered the non-merit position of Secretary of the Personnel Cabinet to the current Human Resource Director for Norton Suburban Hospital. The potential employee plans to resign that position upon acceptance of employment with the state. You are concerned, however, with the employment of the potential employee's spouse who is a director of Customer Service Operations for Humana Insurance, but has no ownership interest in Humana. He is currently on an interim assignment as Vice President of Service Operations in Puerto Rico. You state that the Personnel Cabinet holds a contract with Humana Insurance to administer the state employee self-insurance health plan. You ask whether the potential Cabinet Secretary would need to refrain from any decisions relative to the Personnel Cabinet's contract with Humana. If so, you indicate that the responsibilities of the Personnel Cabinet Secretary related to the Humana Insurance contract will be handled by the Secretary of the Governor's Executive Cabinet.

KRS 11A.020(1)(a) provides:

- (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;

Additionally KRS 11A.020(3) provides:

**EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 07-46**

December 14, 2007

Page Two

(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.

In previously issued advisory opinions, the Commission has opined that a conflict of interest will exist for an employee to be involved in a matter as part of his official duty regarding a person or business by which his spouse is employed, even if the spouse has no ownership interest in the company. Consequently, the Commission believes that if the potential employee is appointed to the position of Personnel Cabinet Secretary, in order to avoid any conflicts of interest, she should abstain as part of her official duties for the Commonwealth from all matters (discussions, decisions, recommendations, inspections, reviews, etc.) regarding the Personnel Cabinet's contract with Humana, as well as any other matters involving Humana, and disclose such abstention pursuant to KRS 11A.020(3) above. See enclosed Advisory Opinions 96-17 and 96-53.

The Commission concurs with the proposed solution to have the Secretary of the Governor's Executive Cabinet handle any responsibilities of the Personnel Cabinet Secretary that are related to Humana Insurance.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Vice Chair: E. Patrick Moores

Enclosures: Advisory Opinion 96-17
Advisory Opinion 96-53