

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 92-4

October 26, 1992

RE: State employee's spouse has private company doing business with the state

In response to your request dated July 20, 1992, the Executive Branch Ethics Commission ("the Commission") hereby issues the following advisory opinion regarding the transaction of business by a company which is partly owned by the spouse of a state employee.

The relevant facts pertaining to your request are as follows. A state merit employee ("merit employee") is married to an individual ("engineer spouse"), who owns seven percent (7%) of an engineering company and also works as an engineer for the company. The company engages in business with the Commonwealth pursuant to contracts awarded under the bidding process through the Department of Finance, Division of Engineering. Currently, the corporation is directly under contract to the Commonwealth on several projects and is listed as a sub-consultant on several other projects. The engineer spouse receives compensation from the company in the form of salary, profit sharing and other normal benefits.

The merit employee owns none of the stock of the company, does not sit on the board of directors of the company and has no control or rights pertaining to the company. Moreover, the merit employee's position in state government is totally unrelated to the services provided by the company to the state. The merit employee plays no role in any selection, contracting, administrative or supervisory capacity and never comes into contact with any aspect of the services or projects which the company has provided. Finally, the company has never had, and does not foresee having, any contracts with or related to the agency for which the merit employee works. Both spouses recognize that if in the future any unforeseen genuine conflict of interest should occur, the merit employee would immediately disqualify and remove himself/herself from any matter relating to the company.

KRS 11A.040(4)/SB63, Section 6(4) provides in pertinent part as follows:

No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded or granted by any state agency. (Emphasis added.)

Applying the above statute to the foregoing facts, the Commission is of the opinion that the company would be prohibited from transacting business with the Commonwealth of Kentucky. The phrase in the above statutory provision "or by any other person for his use or benefit" would apply to the merit employee although he or she may technically own none of the company's stock. Because such employee's spouse owns seven percent (7%) of the company's stock, it can be said that seven percent (7%) of the company's

benefits gained from transacting business with the state accrues in part to the merit employee in his/her capacity as the owner/operator's spouse. The Commission notes the significance of the interrelationship between spouses under these circumstances.

In short, a company that is seven percent (7%) owned by the spouse of a merit (or non-merit) employee would be prohibited from engaging in or transacting business with the Commonwealth pursuant to KRS 11A.040(4)/SB63, Section 6(4) because the merit (or non-merit) employee stands to benefit from the transaction of business with the Commonwealth.