

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93 – 72

December 16, 1993

- RE: (1) Employee's spouse has state contract and employee works part-time under contract
(2) Ownership of Day Care Center

This opinion is in response to your October 22, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the November 22 and December 16, 1993, meetings of the Commission and the following opinion is issued.

You provide the relevant facts for the first matter as follows. The husband of an employee of the Department for Social Insurance (DSI) within the Cabinet for Human Resources (CHR) has been awarded a price contract by the Finance and Administration Cabinet to provide cleaning services for DSI. Although the contract is awarded by the Finance and Administration Cabinet, CHR approves the vendor and monitors compliance with the contract. The DSI employee works part-time for her husband's cleaning service. You ask if this arrangement violates the Executive Branch Code of Ethics.

KRS 11A.040(4) provides:

(4) 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. This provision shall not apply to a contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain or to agreements which may directly or indirectly involve public funds disbursed through entitlement programs.

The DSI employee is in violation of KRS 11A.040(4) above. The statute prohibits the employee, as a public servant, from contracting with any state agency. The Commission believes the provisions apply to the spouse of a public servant as well. Thus, the employee's husband must terminate his contract with the Finance and Administration Cabinet or the employee must resign her position.

Your second matter involves two questions which relate to Advisory Opinion 93-40. You ask if the prohibition against part-time employment with an agency who has a contract with or receives funding from the employee's state agency extends only to the specific Department for which the employee works or if it extends to the entire Cabinet.

In addition, you provide the facts of the second situation as follows. A supervisor within a local DSI office, and her husband, own a day care center in the same county where she is employed. The day-care center receives payments from DSI through federal grant programs such as Job Opportunities and Basic Skills Program (JOBS) and Aid to Families with Dependent Children (AFDC). The day-care is also licensed and inspected annually by the Division of Licensing and Regulation within the Cabinet's Office of Inspector General. Complaints regarding this day-care center are investigated by Licensing and Regulation staff as well as by the Cabinet's Department for Social Services personnel. You ask if the DSI supervisor's ownership of a day-care center is a violation of the Executive Branch Code of Ethics.

In considering a prohibition against part-time employment with an agency who has a contract with or receives funding from the employee's state agency, the Commission has looked to the agency's "appointing authority" to determine whether the agency includes a single Department or the entire Cabinet. In the case of the Cabinet for Human Resources, the appointing authority is at the Cabinet level; therefore the prohibition extends to the Cabinet.

KRS 11A.020(1)(a) and (d) provide:

(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.

The Commission believes that it is a potential violation of the Executive Branch Code of Ethics for the day-care center owned by the DSI supervisor to receive DSI benefits through the JOBS and AFDC programs. Although these are entitlement programs, which are excepted under KRS 11A.040(4), the supervisor has direct authority over the caseworkers who approve payments to the day-care centers. Therefore, a conflict of interest exists between the supervisor's personal interest and her duties in the public interest. However, it is not a violation for the DSI supervisor to partially own a day-care center, if the center has no contracts with and receives no funding from the state, is not regulated by the supervisor's agency, and if the supervisor is not in a position to influence state decisions concerning the center.