

EXECUTIVE BRANCH ETHICS COMMISSION  
ADVISORY OPINION 94 - 36

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June 16, 1994

RE: Are members of the Board of the Bluegrass State Skills Corporation governed by the Executive Branch Code of Ethics?

DECISION: No, unless member is full-time state employee.

This opinion is in response to your May 12, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 16, 1994, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. The Bluegrass State Skills Corporation (the "BSSC") is a de jure corporation and political subdivision of the state within the Kentucky Rural Economic Development Authority of the Economic Development Cabinet. The BSSC is organized under KRS Chapter 154 for the purpose of creating and expanding programs of skills training and education which meet the needs of business and industry within the state. The BSSC is directed by a 18-member board composed of the Commissioner of Employment Services (within the Cabinet for Human Resources), the Secretary of the Economic Development Cabinet, the Secretary of the Labor Cabinet, the Chairman of the Council on Higher Education, the Secretary of the Cabinet for Workforce Development (collectively, the "Named Members"), and 13 members appointed by the Governor who have knowledge and experience in business and industry, skills training, education, and minority employment. The members of the board receive no compensation for their services, but are reimbursed for expenses incurred in the performance of their part-time duties.

You request the Commission to consider whether all of the members of the Board of the BSSC are subject to the Executive Branch Code of Ethics, and if not, whether the Named Members are subject to the Code when acting in their capacity as members of the Board of the BSSC.

KRS 11A.010(9) states:

(9) "Public servant" means:

- (a) The Governor;
- (b) The Lieutenant Governor;
- (c) The Secretary of State;
- (d) The Attorney General;
- (e) The Treasurer;
- (f) The Commissioner of Agriculture;
- (g) The Superintendent of Public Instruction;
- (h) The Auditor of Public Accounts;
- (i) Each Railroad Commissioner; and
- (j) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

KRS 11A.010(7) states:

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the

Parole Board, Board of Tax Appeals, Board of Claims, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the State Board for Elementary and Secondary Education, the State Board for Adult and Technical Education, and any other management personnel with procurement authority;

In Advisory Opinion 93-53 (a copy of which is enclosed), the Commission held that most part-time board and commission members paid on a per diem basis are not public servants as defined in KRS Chapter 11A. However, the opinion also states if a board or commission member is a state employee, and receives a salary from the Commonwealth, the member is subject to the provisions of KRS Chapter 11A by nature of his state employment.

The Commission takes note that the 13 members of the Board of Directors appointed by the Governor serve on a part-time basis and receive no compensation for their service. Therefore, the Commission agrees that the Board Members of the BSSC, appointed by the Governor, are not subject to the provisions of KRS Chapter 11A. The Named Members of the Board, by nature of their other public duties, are subject to the provisions of KRS Chapter 11A, regardless of whether or not they are acting in their capacity as members of the Board of the BSSC.