

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 94 - 40

June 16, 1994

RE: May state employee's child accept scholarship funded by company regulated by employee's agency?

DECISION: Yes, if employee abstains from any agency decisions concerning the company.

This opinion is in response to your May 31, 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. You represent a public servant whose daughter has been awarded a scholarship from a Kentucky University based on her academic performance. The scholarship is funded by a company which is regulated by the public servant's agency. The company, however, has no input into the decision of who will be awarded the scholarship. That decision is made by the university. Based on your review of Advisory 93-81 and the applicable portions of KRS Chapter 11A, you believe the acceptance of this scholarship could present a problem for your client. However, since the company had no part in the decision as to whom the scholarship would be awarded, you believe the acceptance of this award is not a violation of KRS Chapter 11A. In addition, you understand the public servant may have to abstain from decisions relating to the company. You request an opinion from the Commission concerning this situation.

KRS 11A.020(1)(a) and (c) 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;

. . .

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; . . .

In addition, KRS 11A.030 provides guidance for public servants in determining whether to abstain from action concerning an official decision:

11A.030 Considerations in determination to abstain from action or official decision -- Advisory opinion.

In determining whether to abstain from action on an official decision because of a possible conflict of interest, a public servant should consider the following guidelines:

(1) Whether a substantial threat to his independence of judgment has been created by his personal or private interest;

(2) The effect of his participation on public confidence in the integrity of the executive branch;

(3) Whether his participation is likely to have any significant effect on the disposition of the matter;

(4) The need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the executive branch; or

(5) Whether the official decision will affect him in a manner differently from the public or will affect him as a member of a business,

profession, occupation, or group to no greater extent generally than other members of such business, profession, occupation, or group. A public servant may request an advisory opinion from the Executive Branch Ethics Commission in accordance with the commission's rules of procedure.

The Commission takes note of the fact that the company funding the scholarship is not involved in deciding to whom the scholarship is awarded. Thus, in effect, the company is funding the university which, in turn, awards the scholarship.

The public servant's daughter may accept the scholarship funded by the company which is regulated by the agency for which the public servant works. Acceptance of such an award does not appear to be a conflict of interest as long as the public servant abstains from any involvement in decisions relating to the company.