

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 95-38**

October 19, 1995

RE:            May mine inspector contract with coal company for surface mining on his property?

DECISION:    No, in order to avoid the appearance of a conflict.

This opinion is in response to your September 6, 1995, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 19, 1995, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Department of Mines and Minerals within the Public Protection and Regulations Cabinet as a mine inspector. You are responsible for underground roof control inspection and accident investigation. In addition, you serve as a mine rescue team member.

You recently were contacted by a coal company, which is regulated by your agency, regarding surface mining on your property. You indicated to company officials that you could not discuss the matter with them until you received permission from the agency for which you work. The General Counsel for your agency advised that you could enter into contract for mining with the coal company, but should avoid any official activity including, but not limited to, the performance of inspections, with regard to the coal company or any of its subsidiaries. In addition, he suggested that you obtain clarification from the Commission in order to avoid any appearance of impropriety.

Although your job responsibilities normally do not entail the inspection of work performed by the coal company; coworkers in your local office are responsible for such inspections. Additionally, your service as a mine rescue team member may involve interaction with the coal company with which you wish to contract.

KRS 11A.005(1)(a) and (c) provide:

**11A.005 Statement of public policy.**

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

(a) A public servant be independent and impartial;

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(c) A public servant not use public office to obtain private benefits;

Additionally, 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;

Although there does not appear to be a direct prohibition against an employee contracting with an entity which is regulated by the agency for the employee works, the Commission believes in order to avoid an appearance of a conflict of interest you should not enter into a contact or agreement to accept compensation from the coal company. The fact that employees with whom you work on a daily basis are assigned to inspect the coal company presents the appearance of a conflict of interest for you.

In addition, your service as a mine rescue team member may present a conflict for you because such rescue could involve the coal company from which you would be receiving compensation.

Thus, the Commission believes, unless you abstain from all official activity involving coal companies, including inspections, investigations and mine rescue team activity, the appearance of a conflict of interest will exist if you enter into a contract or agreement with the coal company to receive compensation for surface mining on your property.

EXECUTIVE BRANCH ETHICS COMMISSION

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BY: Martin J. Huelsmann, Chairman