

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 95-41**

October 19, 1995

RE: May stockyard owner accept employment with the Department of Agriculture?

DECISION: Yes, as long as not employed by division regulating stockyard.

This opinion is in response to your October 5, 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. The Department of Agriculture seeks to employ an individual as an agricultural inspector. The applicant owns an interest in a stockyard which is regulated by the Division of Animal Health/Field Enforcement within the Department. In addition, the Division of Weights and Measures within the Department is required under federal law to test the scales of the stockyard twice a year. You ask whether the stockyard owner's employment as an agricultural inspector in either of the divisions noted above would be a violation or a perceived violation of the code of ethics. Also, would the applicant be in violation of the ethics code if employed by the Department in a division other than those listed above, but would have inspection responsibilities within the county in which his stockyard is located?

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;

In addition, KRS 11A.040(3) provides:

(3) No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.

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In Advisory Opinion 94-15 (a copy of which is enclosed), the Commission concluded that, due to conflict of interest concerns, an employee should not work in the same division as inspectors of his spouse's business. In addition, in Advisory Opinion 95-15 (a copy of which is included) the Commission states that an executive branch employee should not own an interest which has a value of over \$10,000 or 5% of an entity which is regulated by the agency for which the employee works; an exception is provided if the employee is not directly involved in the regulatory matters concerning the outside entity.

Similarly, the Commission believes that if the applicant owns more than a 5% interest in the stockyard, he should not be employed in a division which is responsible for the regulation of the stockyard. Therefore, the stockyard owner should not work within the Division of Animal Health/Field Enforcement or the Division of Weights and Measures. He is not prohibited from working in another division with the Department of Agriculture as long as the division has no regulatory authority over a business of which the applicant owns more than a 5% interest.

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Enclosure: AO 94-15  
AO 95-15

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BY: Martin J. Huelsmann, Chairman