

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 95-43**

December 19, 1995

RE: Does employee's participation as executive director of a non-profit educational corporation create a conflict of interest?

DECISION: No.

This opinion is in response to your October 10, 1995, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 19, 1995, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are an employee of the Kentucky Transportation Cabinet, Department of Highways, Division of Transportation Planning Intermodal Planning Section. You request an opinion on whether a conflict of interest will exist if you serve as Executive Director, without compensation, for a non-profit educational corporation entitled Kentuckians for Intermodal Transportation.

Kentuckians for Intermodal Transportation intends to promote awareness of intermodal transportation opportunities through three main goals:

- The holding of an annual conference designed to educate those persons in both the public and private sectors on the opportunities afforded them by learning the most effective and efficient ways to utilize transportation services in their businesses;
- The development of educational materials intended for the general public and shippers, in particular, by providing factual data about the use of intermodal and related transportation choices for moving commodities; and
- The providing of educational materials relating to careers in the transportation field, and possibly the creation of a scholarship program for persons interested in such careers.

Kentuckians for Intermodal Transportation has no intent to lobby or otherwise attempt to influence legislation.

KRS 11A.020(1)(a) and (3) provide:

- (1) No public servant, by himself or through others, shall knowingly:

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(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; at large;

...

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

In addition, KRS 11A.040(5) provides:

(5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

From the information provided, the Commission sees no apparent conflict of interest with your serving as the executive director for an educational non-profit corporation which seeks to promote awareness of intermodal transportation opportunities. However, it is difficult to ascertain whether your responsibilities in this non-profit corporation will involve duties similar to those you perform as a state employee or whether the non-profit corporation will have any business or regulatory relationship with the Transportation Cabinet. If either of those two situations exist, other ethical issues are present and will need to be addressed.

Because the nature of this corporation appears to be similar to those issues that you deal with in your state job, the Commission advises you to make a clear distinction between your duties in the public interest and your duties in your private endeavor. As such, you should not use state time, property or supplies for the benefit of your private corporation. In addition, you should refrain from involvement in any decisions in your state job which may affect your private interest.

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BY: MARTIN J. HUELSMANN, CHAIRMAN

