

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 96-5**  
(original issue February 6, 1996)  
**RECONSIDERED AND AMENDED**  
May 14, 1996

RE: May Cabinet Secretary sit on the board of directors of a state bank where the cabinet does not have any regulatory or business relationship with the bank?

DECISION: Yes.

This opinion is in response to your January 9, 1996 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 6, and reconsidered at the March 19 and May 14, 1996, meetings of the Commission, and the following opinion is issued.

You state the relevant facts as follows: As General Counsel to a cabinet of state government, you ask whether the Secretary of your cabinet may sit on the board of directors of a state bank. The cabinet has no regulatory or business relationship with this bank, nor is one foreseen, nor does the cabinet have a regulatory or business relationship with any other bank. The bank has several contracts with other state agencies, but these agencies are not associated with the cabinet, and the contracts are unrelated to the cabinet's function. The Secretary has had a personal banking relationship with the bank for several years, but is not indebted to the bank. It is the bank's policy that its board members transfer any debt obligations to another bank to avoid possible conflicts of interest.

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

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

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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; or

Based on the facts that you have presented, the Commission believes that the Cabinet Secretary is not prohibited from serving on the board of the state bank to which you refer. It appears that such service will not present a substantial conflict between his duties in the public interest and his private interest, as the cabinet does not do business with nor regulate the bank nor any of its competitors, nor does the Cabinet Secretary make any decisions with regard to deposits of state funds into the bank. Additionally, the Commission believes that the bank's policy against having a board member with debts owed to the bank further avoids the appearance of any conflict or personal interest in the bank's business.

We caution the Secretary, however, concerning conflicts of interest which may arise involving solicitation or participation in the extension of credit for new businesses which seek financial assistance or loans. Specifically, no business incentives or loans related to recruitment packages should be offered through the bank to businesses recruited by the cabinet during the Secretary's tenure on the bank board. The Secretary should not discuss the merits or problems of using a certain financial institution with companies seeking economic development incentives. If he knows, or should know, that the bank board will be making a decision about a company which has received economic development incentives from the state, or which is seeking approval for such economic development incentives, he shall refrain from all deliberations and decisions concerning that company, both in his capacity as a bank board member and as the Secretary. Also, in order to avoid a conflict of interest between the Secretary's interest in the bank he serves and his duties in the public interest, he should refrain, in his official capacity, from any discussions or decisions concerning financial institutions.

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If the bank were to develop, or seek to develop, a business relationship with the cabinet which the Secretary heads, or if the Secretary or anyone under his supervision were to be involved in decisions concerning the bank, as part of their official duty, the Secretary should immediately discontinue his service for the bank.

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BY: Ruth H. Baxter, Chair