

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 96-27**

May 14, 1996

RE: May an officer apply for Disadvantaged Business Enterprise certification?

DECISION: Yes.

This opinion is in response to your April 4, 1996 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 14, 1996 meeting of the Commission, and the following opinion is issued.

The relevant facts are provided as follow. You are the vice-chairperson of the Public Service Commission (the "PSC"). You ask whether you may apply for certification as a Minority Business Enterprise ("MBE") through the Office of Minority Affairs, Transportation Cabinet. The procedure for certification as a Disadvantaged, Minority or Women Business Enterprise is set forth in 600 KAR 4:010. Applicants are evaluated and certified on the basis of objective criteria set forth in the regulation. If an enterprise is denied certification, it may appeal to the Transportation Cabinet, and then to the United States Department of Transportation. 600 KAR 4:010, Sections 7 and 11. This certification will enable you to do consulting work for entities other than state government. Certification is often required when providing services to federal or local governments.

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

(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:

...

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

(d) The public has confidence in the integrity of its government and public servants.

KRS 11A.020(1) and (2) state:

(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;

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 96-27**

May 14, 1996

Page 2

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

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

The Commission believes that the objective criteria utilized to determine eligibility would permit you to seek certification, and therefore reconsiders its Advisory Opinion 95-10, which stated that an executive branch officer should not apply for certification as a disadvantaged business enterprise. That opinion stated that it would appear to the public that a special advantage existed, were a fellow executive branch officer to approve the certification. The Commission believes that certification as an MBE would not constitute a special advantage to you, as the certification as a MBE is made if the applicant meets certain objective criteria and is available on an equal basis to all qualified applicants. See Advisory Opinion 95-42 (copy enclosed). As long as you take no action which would lead the general public to believe that you used your office to obtain an advantage over the general public in obtaining or maintaining such certification, and you take care to avoid all conduct in appearing before the Transportation Cabinet which might lead to the conclusion that you are using your official position to advance your private interest, as provided in KRS 11A.020(2), then you may seek certification as a MBE.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Ruth H. Baxter, Chair

Enclosure: AO 95-42