

ADVISORY OPINION 97-11

March 20, 1997

RE: Is the "state agency" for which an employee works the state agency by which his appointing authority is employed?

DECISION: Yes, unless agency is attached for administrative purposes only or agency's characteristics are distinct from the appointing authority.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") on its own initiative. This opinion was adopted at the March 20, 1997, meeting of the Commission.

Executive branch employees have been advised through various advisory opinions to avoid certain outside employment with, and the acceptance of gratuities from, persons and businesses which do business with the state agency for which they work. The question has been posed by many state employees as to what entity is the "state agency" for which they work, i.e. their Cabinet, Department, Division, etc. In an attempt to provide guidance to state employees in determining how narrowly the definition of state agency should be applied for purposes of the ethics code, the Commission issues the following opinion.

KRS 11A.010(10) provides:

(10) "State agency" means every state office, department, division, board, commission, institution, public corporation, and authority within the executive branch.

In Advisory Opinion 95-3, the Commission stated that an organizational unit created by statute, such as a board or commission which is attached to an agency for administrative purposes, is not necessarily a part of the agency to which it is attached, but may be a separate agency.

KRS 18A.005 defines "appointing authority" as follows:

(1) "Appointing authority" means the agency head or any person whom he has authorized by law to designate to act on behalf of the agency with respect to employee appointments, positions establishments, payroll documents, register requests, waiver requests, requests for certification, or other personnel actions.

Thus, the Commission believes that a public servant is employed by the agency by which his appointing authority is employed unless his agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority, and it is considered an agency on its

own, such as an independent department or commission.

For example, employees of the Department of Housing, Buildings and Construction (the "Department"), an agency within the Public Protection and Regulation Cabinet have as their appointing authority the Secretary of the Public Protection and Regulation Cabinet (the "Cabinet"). However, because the Department is an independent entity which has characteristics distinct from the Cabinet, it is considered a separate "agency" for purposes of applying the ethics code. Thus, the state agency for which its employees work is the Department.

Conversely, the Department of Administration and Support within the Economic Development Cabinet is an integral part of the Cabinet by which the appointing authority is employed, and thus the Department of Administration and Support is not considered an "agency" separate and distinct from the Cabinet. The state agency for which the employees of the Department for Administration and Support work would be the Economic Development Cabinet.