

ADVISORY OPINION 97-23

October 7, 1997

RE: May General Counsel represent individual in law suit as counsel of record?

DECISION: No, if against a state agency.

This opinion is in response to your September 2, 1997, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 7, 1997, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are the General Counsel for the Kentucky State Board of Registration for Professional Engineers and Land Surveyors (the "Board"). In addition, you have a private business in which you accept a limited number of boundary dispute lawsuits for the purpose of maintaining and increasing your knowledge of surveying practices. Such knowledge is useful for your work as General Counsel for the Board.

An individual who claims to own land within Robinson Forest has requested that you help resolve a matter involving litigation over title to the property. You ask whether it would present a conflict of interest, or the appearance of one, if you agree to represent this individual in a lawsuit as counsel of record. Additionally you ask, if it presents a conflict for you to serve as counsel of record, may you serve as a consultant to another attorney, without appearing as a counsel of record. You believe that appearing before a circuit court is not appearing before a state agency.

KRS 11A.020(2) provides:

(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.

Additionally, KRS 11A.020(1)(b) 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;
(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

In Advisory Opinion 96-37 (a copy of which is enclosed), the Commission concluded that a General Counsel for a state agency should not represent a client privately against another state agency. The Commission stated that such representation might give the appearance of a conflict even if the representation involved matters unrelated to the General Counsel's official

duties.

From the information provided, the Commission cannot determine whether the dispute over the property involves a state agency. If the litigation over title to the property involves a state agency, and would require you to appear before the state agency, as well as the court, you would be prohibited from representing the individual as counsel of record based on Advisory Opinion 96-37. However, if the litigation does not involve a state agency, and no other conflict exists between your official position and your representation of this matter, you would not be prohibited from representing the individual.

In response to your second question, the Commission believes that, although you are not totally prohibited from serving as a consultant to the counsel of record who may be representing a client against a state agency, you should not be involved if the litigation involves matters concerning the state agency for which you work. Furthermore, you should not have as clients or receive compensation from any individuals who are licensed by the Board. Such private, outside consulting or representation would present a conflict of interest between your responsibility as an employee of a state regulatory agency and your private interests.