

## ADVISORY OPINION 98-18

April 8, 1998

RE: May Transportation employee purchase a farm that adjoins his property and through which a new road designed by the Transportation Cabinet will be located?

DECISION: No.

This opinion is in response to your March 27, 1998 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 8, 1998 meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are an inspector for the Transportation Cabinet's, Division of Construction and are responsible for inspecting highway construction projects let to contract. You are not involved, as part of your official duties, in any of the initial planning or design of any highway projects.

Approximately three weeks ago, the owner of a farm adjoining your personal residence, where you have lived for seven years, approached you and asked if you would be interested in purchasing his farm. You desire to purchase the farm; however, a new Transportation road project is designed to go through the farm. You believe that the proposed project to locate the road through the farm is common knowledge. Several newspaper articles have been published about the new road. You state you first learned of the new road from your neighbors and at a public meeting held in your area approximately two (2) years ago. You have requested permission from the Transportation Cabinet to purchase the farm. You ask whether it will present a conflict of interest for you to purchase this property adjoining your residence.

KRS 11A.020 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;
  - (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.

The Commission takes note that Transportation Cabinet's Official Order #97129 provides in part:

*Real Estate Activities – The Cabinet must necessarily buy real estate to use as right of way for highways. Therefore, it is important that employees of the Kentucky Transportation Cabinet be extremely careful that their personal real estate transactions neither constitute a conflict of interest nor give the appearance to the public of constituting a conflict of interest.*

...

*No employee of the Kentucky Transportation Cabinet shall:*

- (1) Purchase or attempt to purchase any real property or any improvement which is to be removed from any real property on the route or the close proximity to any highway project where right of way is to be acquired, is being acquired, or has been recently acquired.*

The Commission believes this policy is in strict compliance with the above statutes by preventing even the appearance of a conflict of interest, and it affirms this policy, although it believes that there are other policies which also might be in compliance with the above statutes.

Specifically, the Commission believes if the proposed road project has been publicly announced, and you have had no involvement with the road project as a part of your official duty, and thus you would not be using information that you obtained as a part of your official duty to create an advantage or financial gain for yourself, you are not prohibited under the Executive Branch Code of Ethics from purchasing the farm from your neighbor provided your neighbor is aware of the proposed road project. However, the Commission has great concern that, even though an actual conflict may not exist if you purchase the farm, the perception of such a purchase may harm public confidence in the integrity of the Cabinet. Further, the Commission recognizes that Transportation's in-house policy appears to prohibit your purchase of such property. The Commission supports such internal policies that your agency has developed in order to avoid any real or perceived conflicts of interest by its employees.

Additionally, KRS 11A.040(4) provides:

- (4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he

is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

- (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
- (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
- (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises.

You state that you have requested permission from the Transportation Cabinet to purchase the farm. Even if you receive approval from the Cabinet to purchase the farm, you may be prohibited by KRS 11A.040(4) above from selling the property to the state unless the transaction is made pursuant to KRS Chapter 416 relating to eminent domain.