

## ADVISORY OPINION 98-22

May 19, 1998

RE: May Kentucky Higher Education Student Loan Corporation develop an internal code of ethics for employees and board members?

DECISION: Yes, however employees are also subject to the Executive Branch Code of Ethics.

This opinion is in response to your April 17, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 19, 1998, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. As a result of legislation passed by the 1996 General Assembly, KRS 164A.011, the Kentucky Higher Education Assistance Authority and the Kentucky Higher Education Student Loan Corporation (the "Corporation") were directed, by January 1, 1997, to develop a plan for future organization and operation of the respective agencies. The plans were to include a proposed code of ethics to apply to all members of the boards, officers and employees of the respective agencies. The Corporation's plan, submitted in December 1996, proposed to fulfill this mandate through legislation which would require the board members, officers and employees of the Corporation to be subject to the Executive Branch Code of Ethics. This was proposed through House Bill 485 in the 1998 session of the General Assembly; however the bill was not enacted.

You are aware that the Commission believes, as stated in Advisory Opinion 95-4, that the Corporation is an executive branch agency because it is listed in the Legislative Research Commission's ("LRC") *Informational Bulletin No. 171, The Executive Branch of State Government*, as a board attached to the Finance and Administration Cabinet. However, based on KRS 164A.011, and an opinion by LRC's General Counsel that the publication is not a legally comprehensive listing of executive branch agencies, you believe that the board members, officers and employees of the Corporation are not subject to the Executive Branch Code of Ethics. You also believe the fact that your employees are not subject to state personnel statutes, and are not subject to the Commonwealth's Model Procurement Code, as support that the Corporation is not an executive branch agency.

The Corporation desires to internally develop an ethics code for its board members, officers and employees through the regulatory process. Its intention is to review the efforts of other similar entities for the development of its code. You ask the Commission for advice as to whether it concurs with such a development or whether the Corporation should consider other alternatives.

KRS 11A.010(9) defines "public servant" to mean all employees in the executive branch. Because the term "executive branch" is not defined in KRS Chapter 11A, the Commission, as authorized in KRS 11A.110(1), issued Advisory Opinion 95-4 (a copy of which is enclosed) which concludes that those agencies listed in the LRC's Informational Bulletin No.

171, *The Executive Branch of Kentucky State Government*, are considered to be within the executive branch. Although this publication may not be a legally comprehensive listing of executive branch agencies, the Commission has opined that it will use this document to determine whether or not an entity is an executive branch agency for purposes of implementing and enforcing KRS Chapter 11A. Consequently, because the Corporation was included in the publication as of July 1997, the Commission considers the employees of the Corporation to be public servants subject to the Executive Branch Code of Ethics.

Additionally, lending support to the Commission's opinion is the fact that the Corporation is listed in the Comprehensive Annual Financial Report ("CAFR") as a proprietary fund component unit of the Commonwealth of Kentucky under the financial reporting entity of the state. All twelve proprietary funds listed in the CAFR are within the executive branch of state government.

Although the employees of the Corporation are subject to the Code of Ethics, board members of the Corporation are not subject to KRS Chapter 11A, according to Advisory Opinion 93-53 (a copy of which is enclosed). Thus, the Commission commends your efforts to develop an internal code of ethics that would apply to board members as well as employees. The Commission would be happy to review any internal policies at your request.

Enclosure: AO 93-53  
AO 95-4