

ADVISORY OPINION 98-31

June 25, 1998

RE: Do internal policies help to avoid perceived conflict of interest for General Counsel?

DECISION: Yes.

This opinion is in response to your June 2, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 25, 1998, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. On March 11, 1998, the Department of Insurance contacted the Executive Director of the Commission concerning any potential conflict of interest the new General Counsel of the Department of Insurance (the "Department") may have as a former employee of three different insurers. The Executive Director stated that there was no express prohibition in the Executive Branch Code of Ethics limiting the work that a state employee may perform due to previous employment, but suggested that the Department should develop internal policies to address any perceived conflict. You wish to confirm the Commission's position on this matter and request an advisory opinion on the internal policies that the Department has developed as stated below.

The Department recognizes the General Counsel's actual or perceived conflict of interest in dealing with any issues that involve the activities during the period that the General Counsel was employed by the three insurers. Thus, the Department has established procedures and protocol to ensure that the General Counsel is not involved directly or indirectly with those issues. For example, the General Counsel has been completely isolated from a lawsuit that one of her former employers has brought against the Department of Insurance concerning a 1993 merger. That case has been assigned to an attorney who works directly under the Commissioner of Insurance and who does not report to the General Counsel on any matters. Further, the attorney who is handling the market conduct examination, regarding a former employer of the General Counsel, reports directly to the Commissioner regarding that case.

However, the Department proposes that the General Counsel be involved in activities of her three former employers regarding activities for periods of time other than the time in which the General Counsel was employed. The General Counsel will be alert to any special, current matter that may require abstaining from involvement in a particular case.

KRS 11A.020(1) through (3) 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.

(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.

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

The Commission commends the Department for its efforts to avoid any real or perceived conflicts of interest of its employees. The Commission believes the internal policies developed to avoid any perceived conflicts of the General Counsel will serve to promote public confidence in state government. Upon review of the procedures that the Department has established, the Commission recommends that the General Counsel's intention to abstain from matters involving certain time periods of the insurers for which she formerly worked be documented in writing as required by KRS 11A.020(3). Additionally, the Department may wish to document in writing the procedure it has established for the conduct of those matters from which the General Counsel is abstaining.

Further, Advisory Opinion 98-19 (a copy of which is enclosed) issued by the Commission states that although an employee is not specifically required by the Executive Branch Code of Ethics to refrain from involvement in matters concerning former private employers, the Commission encourages such abstention for a limited period of time as determined reasonable by the Department. Thus, in addition to requiring the General Counsel to abstain from matters concerning particular time periods of former employers, the Department, in order to uphold the public trust, also may want to require the General Counsel to abstain, for a limited period of time, from any matters concerning her former employers.

Enclosure: AO 98-19