

ADVISORY OPINION 98-33

September 3, 1998

RE: May assistant attorney general, six days prior to his retirement, file to run for a seat on the Court of Appeals?

DECISION: Yes.

This opinion is in response to your June 23, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 3, 1998, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. An assistant attorney general within the Office of the Attorney General plans to retire from state government on February 1, 1999, and run for a seat on the Court of Appeals. The filing deadline for the seat on the Court of Appeals is January 26, 1999. The employee plans to use annual leave time from January 16 until February 1 in order to avoid any appearance of a conflict of interest. Additionally, the employee states that he will not campaign nor solicit funds prior to his retirement. You ask for an opinion regarding this matter.

KRS 11A.020(1) 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 believes that the assistant attorney general, as a non-merit employee, may file to run for a seat on the Court of Appeals, provided he does not use his influence or official position to create advantages or privileges for himself and provided he does not use state time or equipment for his campaign.