

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 99-28

August 31, 1999

RE: Must hearing officer abstain from matters involving father's law firm?

DECISION: Yes.

This opinion is in response to your June 3, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 31, 1999, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. A hearing officer employed by the Office of the Attorney General has requested approval for outside employment with his father's law firm. The hearing officer will be assuming new duties as the manager of the Information Resources Branch in the next several weeks. He will continue to do a small number of hearings during the next six months. The hearing officer will not handle any hearing in which his father's firm has an interest. You ask whether the hearing officer should abstain from involvement, as a part of his official duty, in any matter involving his father's firm, even if he is not the hearing officer.

KRS 11A.020(1) and (3) provide:

(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.

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(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.

Additionally, KRS 11A.040(10)(b) provides:

(10) Without the approval of his appointing authority, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.

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(b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.

Based on the provisions above, outside employment for the hearing officer should not be approved if the hearing officer is involved, as a part of his official duty, in any matters involving his father's law firm. Consequently, if the hearing officer's outside employment is approved, neither he, nor anyone under his supervision, should be involved in any matters involving his father's firm. Such abstention by the hearing officer should be documented in writing as required by KRS 11A.020(3) above.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: CYNTHIA C. STONE
VICE CHAIR