

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 99-30

August 31, 1999

RE: Does conflict exist for employee whose spouse owns more than a \$10,000 interest in a bank that is regulated by the division over which the employee is director?

DECISION: No, if the employee refrains from involvement in matters pertaining to the bank.

This opinion is in response to your June 22, 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. In 1996 you asked for assistance in a matter involving the spouse of an employee of the Department of Financial Institutions. The Commission issued Advisory Opinion 96-53 in response to that request, advising that an employee could accept a position as director over a division that regulated a bank where his spouse was employed, provided the employee was not involved in any matters concerning the bank for which the spouse worked. Additionally, the Commission advised that if the spouse's interest in the bank was more than \$10,000, the employee should review Advisory Opinion 95-15 to guide his behavior.

Recently, the employee has learned that his spouse now owns more than a \$10,000 interest in the stock of the bank through the spouse's retirement account at the bank. The employee owns this stock only as a result of participation in the bank's retirement plan in which all employees participate. The employee's spouse has no control over the purchase of the bank stock for the retirement plan.

You believe that, because the employee's spouse has no control over the purchase of stock in the retirement plan, this situation is similar to stock purchased through a mutual fund. You note that the bank has over \$50,000,000 in equity capital, and thus the spouse's interest is miniscule. Additionally, the employee has no involvement in matters concerning the bank for which his spouse is employed. You ask whether the spouse's interest in the stock of the bank creates a conflict for the employee.

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Advisory Opinion 95-15 states that the Commission believes that neither an employee nor his spouse should own more than an interest of \$10,000 in a company that is regulated by the state agency for which the employee works. However, the opinion also states that if, in his state employment, the employee is not directly involved in any matters (regulatory, business or other) concerning the company or other entity of which he owns an interest, he would not be violating the ethics code.

Additionally, KRS 11A.005(1) provides:

- (1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:
 - (a) A public servant be independent and impartial;
 - (b) Government policy and decisions be made through the established processes of government;
 - (c) A public servant not use public office to obtain private benefits; and
 - (d) The public has confidence in the integrity of its government and public servants.

You state in the information provided that the employee has no direct involvement with the bank for which his spouse is employed. Therefore, the Commission believes that a conflict does not exist for the employee. However, the Commission believes if the spouse owns a five percent (5%) or more interest in the bank, an appearance of a conflict will exist even if the employee is not directly involved in matters concerning the bank.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: CYNTHIA C. STONE
VICE CHAIR