

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 99-53
December 10, 1999

RE: May employee accept grant from Renaissance Kentucky program?

DECISION: Yes.

This opinion is in response to your December 6, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 10, 1999, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. An employee of the Kentucky Heritage Council and his wife have applied for and received a grant from the Renaissance Kentucky program. Governor Paul Patton initiated the Renaissance Kentucky program in 1996 to assist Kentucky's cities in downtown revitalization. The Renaissance Kentucky Program is administered by the Renaissance Kentucky Alliance (the "Alliance"), which is a formal partnership of the Department for Local Government, the Kentucky Heritage Council, the Kentucky League of Cities, the Transportation Cabinet and the Kentucky Housing Corporation (lead agency). The Alliance awards grants to cities or local renaissance entities which in turn award grants to individual property owners.

Once a grant is awarded, the Kentucky Heritage Council reviews the applicant's plans for the use of the award to insure compliance with federal standards. When the work is complete, the Heritage Council must approve the work before payment of the grant is made to the individual property owner. Neither the employee who has received the grant, nor anyone under his supervision, has any involvement as part of his official duty in the review of such plans or in the review of the completed work. Additionally, neither the employee nor anyone under his supervision serves as a representative on the Alliance.

You ask whether it is a violation of the Executive Branch Code of Ethics for the employee or his spouse to receive a grant from the Renaissance Kentucky program to restore the facade of a historic building which they own.

KRS 11A.020(1) and (2) 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.

(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.

Additionally, KRS11A.040(4) provides:

(4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340.

The Commission notes that the grant received by the employee from the Renaissance Kentucky program is not an agreement with the agency by which he is employed, and thus is not a violation of KRS 11A.040(4). Although the Kentucky Heritage Council is a member of the Alliance that administers the Renaissance Kentucky program, the Commission does not believe that the grant awarded is an agreement with the Kentucky Heritage Council, but rather an agreement between the employee and the local renaissance entity.

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 99-53
December 10, 1999
Page Three

Furthermore, the Commission believes that the employee may accept the grant from the Renaissance Kentucky program because the employee has no involvement, as part of his official duty, in matters pertaining to the Kentucky Renaissance program or in the approval of plans for the improvement of his private property. The employee should not use his position in any way to give himself an advantage.

Additionally, the employee should take great care not to appear before the Kentucky Heritage Council or the Alliance in any way that would lead the general public to believe that he is using his official position to benefit himself privately.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Bertie Oldham Salyer, M.A., A.M.E.