

Executive Branch Ethics Commission
ADVISORY OPINION 11-02
March 8, 2011

RE: Is it a conflict of interest for an appointed Commissioner of the Kentucky Real Estate Commission (KREC) to simultaneously serve in the elected position of Director-at-Large on the Board of Directors for the Kentucky Association of Realtors® (KAR), while also serving as Chair of KAR's Government Affairs Committee and as Chair, Board of Trustee, R-PAC, which is the political action committee of the Greater Louisville Association of Realtors® (GLAR)?

DECISION: Yes.

This advisory opinion is issued in response to your December 1, 2010 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the January 18, 2011 and March 8, 2011 meetings of the Commission and the following opinion is issued.

You provide the relevant facts as follows:

The KREC is charged with protecting the public interest through regulation, examination and licensing of Kentucky real estate sales associates and brokers, pursuant to KRS Chapter 324. It also approves and monitors pre-licensing instruction and testing, as well as continuing education for its licensees. In addition, the KREC investigates complaints that are filed against its licensees, as well as allegations of unlicensed brokerage activities.

Pursuant to KRS 324.281(1) and (3), the Governor appoints the five Commissioners of the KREC, including four real estate licensees, from a list of three names for each vacancy provided by the KAR. The fifth member is a citizen member selected by the Governor.

You state that the KAR is not affiliated with the KREC, but its members are regulated by the KREC. The KAR is governed by a leadership team comprised of a President, Board of Directors and Delegate Body and served by volunteer committees. Members of the KAR receive benefits that include educational offerings to satisfy industry requirements, lobbying efforts on multiple levels of government, and arbitration and mediation for disputes.

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GLAR is another professional organization with members who are licensees regulated by the KREC. The association's stated core purpose is to help its members to be more profitable and successful. GLAR offers education courses regulated by the KREC.

KRS Chapter 11A applies to public servants, including all employees in the Executive Branch. Commissioners of the KREC are not public servants as that term is defined in KRS 11A.010(9). They receive a salary provided by statute, but they do not receive employee benefits such as health insurance and retirement benefits. Members of the KREC are, however, subject to Executive Order 2008-454. Paragraph seven of Executive Order 2008-454 provides:

(7) A state policy-making or regulatory board or commission member shall disclose to the other members of the board, commission, authority, council or committee of which he or she is a member, any direct or indirect interest in any undertaking that puts the member's personal interest in conflict with that of the agency. This disclosure shall be made in writing or shall be recorded in the minutes of a formal meeting. A member who is required to publicly disclose a direct or indirect interest shall abstain from all decisions concerning his or her interest if the decision should affect him or her as a member of a business, profession, occupation, or group in a manner different from other members of the business, profession, occupation, or group.

The Commission previously determined in Advisory Opinions 08-16, 09-12, and 09-21 that an individual serving on a state regulatory board should not also serve in a leadership role of a professional association comprised of individuals regulated by the state board on which he or she serves. While the dual service in and of itself may not be a conflict of interest, depending on the nature of the professional association, the Commission finds it likely that conflicts will arise on such a frequent basis that the board member would in reality not be able to function in both capacities. Generally the professional associations exist, at least in part, for the purpose of lobbying the legislature and/or regulatory board, as well as to serve the interests of its members, which are the same people regulated by the state board. While the Commission believes that board members may belong to their professional associations, the Commission feels strongly that board members should no longer serve in leadership roles (e.g. voting members of the board) in their professional associations once they are appointed to their profession's regulatory board.

Accordingly, it is a conflict of interest for a Commissioner of the KREC to serve as a Director at Large for the KAR, Chair of the KAR's Government Action Committee, or in a leadership position for GLAR.

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Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Ron Green

Attachments: Advisory Opinion 08-16
Advisory Opinion 09-12
Advisory Opinion 09-21

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