

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-5

February 13, 2003

RE: Does investigation of political opponent create an actual conflict of interest for Attorney General?

Decision: Yes, and the Attorney General must remove himself from any involvement regarding the investigation.

This opinion is in response to your January 23, 2003, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 13, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Attorney General has filed as a candidate for governor. Another individual who has filed as a candidate for governor was previously the Chief Executive Officer ("CEO") of a corporation whose successor corporation has been under criminal investigation by the Attorney General's office for two years, and the other candidate is currently the CEO of the corporate landlord of the successor corporation.

You ask:

Must the Attorney General close his office's investigation and refer the case to another agency, or must the Attorney General resign his position in order to prevent conflicts of interest during the campaign under KRS 11A.020(1) which provides in part:

(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;

You also ask if it makes any difference if no other single agency, federal or state, has jurisdiction to complete and prosecute the criminal actions under investigation.

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As a public servant, the Attorney General must abide by the provisions of the Executive Branch Code of Ethics (the "Ethics Code") set forth at KRS 11A. The conflict of interest provision cited above states clearly that no public servant can use his influence in a matter that involves a substantial conflict between his private interest (in this case, the Attorney General's candidacy for political office) and his duties in the public interest (in this case, the Attorney General's mandate to enforce the law in Kentucky).

It does appear that a potential conflict of interest exists in this matter, and the Attorney General must take steps to ensure that he has no part in the ongoing investigation, and that he receives no communications from employees conducting the investigation. The Commission believes if the Office of the Attorney General continues to investigate this matter, unspoken or implied pressure may exist or appear to exist for the employees conducting the investigation.

In order for the Attorney General to remove himself from being in a position that would allow him to misuse his influence, or give an appearance that he might be misusing his influence or that his influence may be creating implied pressure, the Commission believes that the Office of the Attorney General should remove itself from the investigation until after the primary election, or refer the case to another law enforcement agency, not under the authority of the Office of the Attorney General, that could appropriately investigate and prosecute the case. If no agency has jurisdiction to prosecute the case, the Commission believes that the case could be returned to the Office of the Attorney General once the election is over.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.