

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 04-14**

August 5, 2004

**RE:** May an executive director of a regulatory board review real property appraisals for an agency of a local government?

**DECISION:** No.

This opinion is issued in response to your April 12, 2004 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). The matter was reviewed at the May 27, and August 5, 2004 meetings of the Commission, and the following opinion is issued.

You state the following relevant facts. You have served as the Executive Director of the Kentucky Real Estate Appraisers Board (the "Board") since September 1, 2003. Prior to that you served the Board as its Chief Complaint Investigator and Director of Education since July 1, 1995. Since 1977 you have been a practicing real property appraiser. You state that you have had a very diverse practice, and because of that are often asked to perform appraisals outside of your service to state government.

While serving as the Chief Complaint Investigator/Director of Education for the Board, the Board allowed you to accept review assignments not related to those official duties so long as you divorced this work from your work for the Board.

You have been asked by an agency within a Kentucky city government to review real property appraisals relative to rural farmland conservation easements. You state that the city government agency requesting your services is not connected to the Board and that you are personally not connected to the city government in your official duties. In addition, you say that the appraisals you are being asked to review are not connected to federally related transactions, as you say that federally related transactions are "the only statutory authority granted the (Board) in governing the work of real property appraisers regulated by the Board." You go on to say that you have no regulatory authority over the real property appraisers or any other party in the work you have been requested to do, and you reiterate this proposed review is not included in a federally related transaction.

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You ask: "Would there be a problem with ethical conduct in my accepting the outside work assignment described?"

You mention that one reason the city government wishes to retain your services in this regard is because "The process is technical and the number of appraisers having knowledge of the type of required principles and procedures is limited."

The powers and duties of the Board are set forth in KRS 324A and in regulation at 201 KAR 30 *et seq.* You state that 201 KAR 30:030 "advise that the Kentucky licensing program for real property appraisers applies to appraisers required in federally-related transactions." However, it is readily apparent that the Board regulates licensed non-federal real property appraisers, as well, as set forth in 201 KAR 30:020. KRS 324A.035 requires the Board to establish administrative regulations for the certification and licensure of appraisers of real property in both federally related transactions and non-federally related transactions. In addition, KRS 324A.065 lists a fee schedule for "certification or licensure as an appraiser" for both those dealing in federally related transactions and for those engaged solely in non-federally related transactions. Regulation of both types of appraisers is further evidenced by the provisions of KRS 324A.052 that require the Board to investigate complaints filed against licensees.

KRS 11A.020(1)(a) provides:

- (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;

For purposes of analyzing the information and responding to your request, the distinctions between federally related transactions and non-federally related transactions of appraisers is unimportant. Because the Board directly regulates both types of transactions, and because you are Executive Director of the Board, a conflict of interest is inevitable if you are involved in regulating real property appraisers at the same time you are engaged in the private practice of performing real property appraisals or reviews of other appraisers' work. Furthermore, if the reviewers of real property appraisals are licensed by the Board, it would present a conflict for you to compete with them privately to provide services for the city agency.

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The Commission believes that you are not prohibited from volunteering your services for the local government, provided you will not benefit privately in some way from such action. However, an appearance of a conflict may still exist for you even if you do not accept compensation for your service.

In Advisory Opinion 02-41 (a copy of which is enclosed), the Commission advised the Board Administrator and the Executive Director of the Kentucky Board of Respiratory Care that neither individual should work privately as respiratory therapists "...because the Board directly regulates respiratory therapists in Kentucky." Also, see Advisory Opinion 02-53 (also enclosed), in which the Commission addressed a similar scenario.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinion 02-41  
Advisory Opinion 02-53