

Executive Branch Ethics Commission  
**ADVISORY OPINION 07-22**  
June 29, 2007

**RE:** May the Commissioner of the Kentucky Department of Fish and Wildlife Resources own and operate an environmental consulting business?

**DECISION:** Yes, within limitations.

This opinion is issued in response to your May 24, 2007, request for an Advisory Opinion from the Executive Branch Ethics Commission (“Commission”). This matter was reviewed at the June 29, 2007, meeting of the Commission and the following opinion is issued.

You are the Commissioner for the Kentucky Department of Fish and Wildlife Resources. As such, you state that you are responsible for the “general supervision and control of all activities, functions, appointments, and employees of the Department of Fish and Wildlife Resources...” and to “enforce all provisions of the laws of the state relating to wild animals, birds, fish and amphibians, and shall exercise all powers necessarily incident thereto not specifically conferred on the commission.” KRS 150.061(4). By necessity, you indicate that your job includes overseeing the Department’s applications for grants from nonprofit agencies as well as state and federal government.

You wish to create a private environmental consulting business. According to your letter, this consulting business would include the following components: advising on environmental permitting and compliance; providing technical guidance and implementation; assisting in public relations and professional support; advising in conservation real estate ventures; conducting research and surveys; and providing organizational planning.

Your questions are as follows:

1. *Can the Commissioner of the Kentucky Department of Fish and Wildlife Resources own and operate an environmental consulting business so long as he does not use his official title to attract business, imply or give advantage to clients by virtue of his office or use his office in any way to gain competitive advantage in business?*
2. *Can the Commissioner of the Kentucky Department of Fish and Wildlife Resources own and operate an environmental consulting business so long as he does not accept clients who would compete for grants given by or managed by the Kentucky Department of Fish and Wildlife Resources?*

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3. *Can the Commissioner of the Kentucky Department of Fish and Wildlife Resources own and operate an environmental consulting business so long as he does not accept clients who would compete against the Kentucky Department of Fish and Wildlife Resources for grants from nonprofit organizations and state and federal government?*

KRS 11A.020(1) 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;
  - (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.

Additionally, KRS 11A.040(4) states:

- (4) A public servant shall not 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. This provision shall not apply to:
  - (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
  - (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or

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- (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or
- (d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction; or
- (e) Sales of craft items to a state park by interim state employees designated as craftspersons under KRS 148.257.

As the Commissioner of the Kentucky Department of Fish and Wildlife Resources, it would not present a conflict of interest for you to own and operate an environmental consulting business, privately, so long as you comply with the following guidance. As you have stated, you should not use your official title to attract business, imply or give advantage to clients by virtue of your office, or use your office in any way to gain a competitive advantage in your private business.

Moreover, in order to avoid a conflict of interest in your environmental consulting business, again as you have proposed, you should not accept clients who seek grants given by or managed by the Kentucky Department of Fish and Wildlife Resources, who compete against the Kentucky Department of Fish and Wildlife Resources for grants from nonprofit organizations and state and federal government, or that seek to do business with, are regulated by, or have any matters regulated by or pending before the Kentucky Department of Fish and Wildlife Resources. As the Commissioner of your agency, you are considered to be directly involved in all matters pending before your agency. That being the case, it does not appear feasible that you would be able to abstain from involvement in matters your private clients might have pending before your agency, whether relating to grants or to any other business or regulatory matters. Acceptance of clients who seek grants from the Kentucky Department of Fish and Wildlife Resources, compete with the Kentucky Department of Fish and Wildlife Resources privately for grants, or who seek to do business with, are regulated by, or have matters pending before the Kentucky Department of Fish and Wildlife Resources would create a conflict of interest for you between your duties in the public interest for the Kentucky Department of Fish and Wildlife Resources and the private interest of your environmental consulting business.

A similar situation was discussed in Advisory Opinion 99-26, attached, wherein the Commission provided guidance to a state employee who wished to serve as a private consultant in matters related to his state employment. As stated in that opinion, in addition to the restrictions identified above, you should also take care not to provide consulting services in matters that are a part of your official duty to provide. You are not prohibited from using general knowledge gained in your state position, but you should not receive outside compensation for providing services that fall within the scope of your normal job duties. Further, you

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should make a clear distinction between your position as Commissioner and your private consulting business, and not use any state time, resources, or equipment for the business. You also may want to review Advisory Opinions 98-16 and 99-31.

Also keep in mind the restrictions contained in KRS 11A.040(4), above, which prohibit you, or a business in which you own more than a five percent interest, from having a contract with, or enjoying a part of a contract with, your own agency.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Chair: John A. Webb

Enclosure: Advisory Opinion 99-26