COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
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Executive Branch Ethics Commission
ADVISORY OPINION 08-19
July 11, 2008

RE: May the Executive Director of a state Board be involved in the RFP and bid selection process when the Executive Director's adult children are associated with one of the potential bidder's companies as independent contractors?

DECISION: No.

This opinion is in response to your March 24, and May 14, 2008 requests for an advisory opinion from the Executive Branch Ethics Commission ("Commission"). This matter was reviewed at the July 19, 2008 meeting of the Commission and the following opinion is issued.

The Kentucky Real Estate Appraisers Board ("KREAB or the "Board") is a regulatory board that was created to administer and enforce the laws governing real estate appraisers practicing in the state. The Board enters into personal service contracts for investigative services by competitive bidding using the Model Procurement Code. The Board asks whether it is appropriate for the Executive Director to be involved in the RFP and bid selection process where the Executive Director's adult children are associated with a company owned by a potential bidder.

The Board represents that the Executive Director's sons are affiliated with a specific appraisal company as independent contractors. The appraisal company is owned by an individual who also owns a company providing investigative services. The company providing the investigative services is the company expected to bid on the contract with KREAB.

You represent that the investigative services company is totally separate from the company providing the appraisal services. The Executive Director's adult children are not involved with any of the investigative services or with anyone providing the investigative services. You state that the bidder does not co-mingle the responsibilities or the finances of appraising with investigations.

Although KREAB has the sole responsibility for all decisions for setting the selection criteria, rating the bids received, and selection of the winning bid, the Executive Director has

abstained from discussion of the RFP or the selection process in accordance with 11A.020(3). He has also abstained from any participation in hiring the contractor, supervising the contractor or with any of the staff responsible for investigating cases.

Further, the Board asks, "Does the mere fact that the Executive Director's children are independent contractors in an appraisal business that is run by an individual who also operates an investigative services business cause a conflict for the Executive Director where the Executive Director abstains from the selection process in accordance with KRS 11A020(3)?"

KRS 11A.020(1)(a), (c) and (d), and KRS 11A040(3) 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;
> ...
> (c) Use his official position of 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.

KRS 11A.040(3)

> A public servant shall not knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business or regulatory action with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.

In Advisory Opinion 03-1, the Commission held that attorneys involved in mediation of cases involving a real estate firm where the attorneys' mothers are associated with the firms as independent contractors, should not be involved in any matters involving either of their mothers and must disclose their abstention in writing. However, we also noted the lack of an employment relationship finding that the attorneys could be involved in mediation with the real estate firm as long as they disclosed that association in writing and recused themselves from matters directly involving their mothers.

The Commission believes the same rationale applies in this case. The Executive Director should disclose the relationship and his intention to abstain from matters involving his sons.

The Commission further believes that the steps the Executive Director has taken in this situation are appropriate especially if the separation of the bidder's two companies is not readily apparent to the public. For instance, if the two companies share a similar name, i.e., Bob Smith appraisals, Inc. and Bob Smith Investigations, Inc. then the disclosure and abstention, depending upon the circumstances, will remove any appearance of impropriety.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: John A. Webb

Enclosure: Advisory Opinion 03-1