COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
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FOUNTAIN PLACE SHOPPES
#3 FOUNTAIN PLACE
FRANKFORT, KY 40601
(502) 564-7954
FAX: (502)-564-2686

DANA C. NICKLES
GENERAL COUNSEL

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 08-27
September 26, 2008

RE: May the Executive Director of the Office of Financial Management for the Kentucky Finance Cabinet serve as a public issuer representative board member on the Municipal Securities Rulemaking Board?

DECISION: Yes.

This opinion is issued in response to your September 5, 2008 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September, 26, 2008, meeting of the Commission and the following opinion is issued.

The Municipal Securities Rulemaking Board ("MSRB") was established by Congress in 1975 to develop rules and regulations for municipal securities dealers and banks to protect investors and the public interest. Board members of MSRB are compensated and receive reimbursement of expenses.

In your capacity as Executive Director of the Office of Financial Management, you have no oversight or regulatory authority over MSRB's activities, which is governed by the Securities and Exchange Commission.

KRS 11A.020 (1) and (3) 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.

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

KRS 11A.030 provides:

In determining whether to abstain from action on an official decision because of a possible conflict of interest, a public servant should consider the following guidelines:

(1) Whether a substantial threat to his independence of judgment has been created by his personal or private interest;

(2) The effect of his participation on public confidence in the integrity of the executive branch;

(3) Whether his participation is likely to have any significant effect on the disposition of the matter;

(4) The need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the executive branch; or

(5) Whether the official decision will affect him in a manner differently from the public or will affect him as a member of a business, profession, occupation, or group to no greater extent generally than other members of such business, profession, occupation, or group. A public servant may request an advisory opinion from the Executive Branch Ethics Commission in accordance with the commission's rules of procedure.

KRS 11A.040 (10) provides:

> (10) Without the approval of his appointing authority, a public servant shall not accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.
>
> (a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.
>
> (b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.
>
> (c) The appointing authority, if applicable, shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.

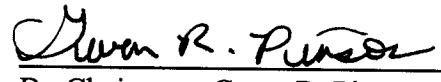
The Commission has determined previously in numerous advisory opinions that a public servant may serve on a board of an entity that is not regulated and has no business relationship with the agency employing the public servant. See Advisory Opinions 96-05, 99-22, 00-43, and 04-3. In the event that a conflict arises between your official duties and your service on the MSRB Board, then you should recuse yourself from any involvement in the matter in your official duties and file a written abstention in accordance with KRS 11A.020(3).

Since MSRB Board members are compensated for their service on the Board, and pursuant to KRS 11A.040(10), serving as a Board member may constitute outside employment requiring the approval of your appointing authority.

Additionally, since you will be paid for your service on the Board, but such service could be beneficial to your agency, you must obtain agency approval to perform duties as a MSRB Board member on state time and with state resources. Such duties must not interfere with your official duties for the Finance Cabinet, must be approved by your agency, and must be in accordance with agency policies.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: Gwen R. Pinson