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Executive Branch Ethics Commission
ADVISORY OPINION 08-28
September 26, 2008

RE: May members of the Kentucky Board of Auctioneers (hereinafter "Board") who are licensed auctioneers perform auction activities for or with other licensed auctioneers, or for other state entities for payment of his or her services?

DECISION: Yes, but the Board member cannot perform auction activities for the Board. Further, the Board member must publicly disclose conflicts of interest that may arise and abstain from all decisions by the Board in the matter.

This opinion is issued in response to your June 13, 2008 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"), which was received on July 9, 2008. The matter was reviewed at the September 26, 2008 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows:

The Kentucky Board of Auctioneers licenses and regulates auctioneers, apprentice auctioneers, auction house operators, and livestock auctioneers in the Commonwealth of Kentucky. The Kentucky Board of Auctioneers is governed by KRS Chapter 330.

Pursuant to KRS 330.050, the Governor appoints the members to the Kentucky Board of Auctioneers. The statute requires that the Board shall be composed of five members; four members must be auctioneers who have been auctioneers for at least five years and one member must be a citizen-at-large or consumer member.

You further state that the members of the Kentucky Board of Auctioneers are actively involved in the profession of auctioneering. They may work with or for other auctioneers. These professional services are separate from their duties as Board members. If any Board matters involve work-related entities, the Board members recuse themselves from such matters.

You ask whether the members of the Board who are licensed auctioneers may perform auction activities for or with other licensed auctioneers, or for other state entities for payment of his or her services.

In Advisory Opinion 04-24, the Commission clarified that members of the Board are not subject to KRS Chapter 11A. However, members of the Board are subject to Executive Order 2008-454. Paragraphs six (6) and seven (7) of Executive Order 2008-454 provide:

> (6) No member of a state policy-making or regulatory board or commission, shall himself or herself or through a business in which the member owns or controls an interest of more than five percent (5%), or by any other person for the member's use or benefit or on the member's account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the board, commission, authority, council, or committee of which he or she is a member. This prohibition shall not apply to purchases that are available on the same terms to the general public or which are made at public auction.
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> (7) A state policy-making or regulatory board or commission member shall disclose to the other members of the board, commission, authority, council or committee of which he or she is a member, any direct or indirect interest in any undertaking that puts the member's personal interest in conflict with that of the agency. This disclosure shall be made in writing or shall be recorded in the minutes of a formal meeting. A member who is required to publicly disclose a direct or indirect interest shall abstain from all decisions concerning his or her interest if the decision should affect him or her as a member of a business, profession, occupation, or group in a manner different from other members of the business, profession, occupation, or group.

Executive Order 2008-454 prohibits a Board member personally or through a business from benefiting from any contract entered into or awarded by the Board. However, Executive Order 2008-454 does not prohibit a Board member from otherwise entering into a contract with state entities. Likewise, Executive Order 2008-454 does not prohibit a Board member from performing auction services with or for another auctioneer, so long as the other auctioneer is not performing services under a contract entered into or awarded by the Board.

In the event that a conflict arises between the personal interests of the Board member resulting from the performance of auction activities and interests of the Board, then the Board member must formally disclose the conflict in writing or cause the disclosure to be reflected in the minutes of a Board meeting and abstain from all decisions of the Board on the matter.

A conflict exists in a particular matter if the Board member's interest in the decision of the Board would affect him or her in a manner different from other auctioneers. Board members should not perform auction activities that he or she knows will present a conflict of interest between his or her personal interest and service on the Board.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Gwen R. Pinson