COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
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Executive Branch Ethics Commission
ADVISORY OPINION 08-30
November 14, 2008

RE: 1. Is it permissible for a landscaping company owned by a state employee to provide landscaping and mowing services for a property owner or manager that does business with the employee's cabinet?

2. Is it permissible for the landscaping company to continue to do work for the property owner/management company on properties they may own or manage if said properties are not leased by the employee's Cabinet?

DECISION: 1. No.

2. Yes.

This opinion is issued in response to your October 28, 2008 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the November 14, 2008 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows:

You are a principal with a local landscaping company and have been in a business relationship with a property management company and its affiliates who own and manage local properties. The property management company leases at least one local property to the Cabinet for Health and Family Services ("CHFS").Your landscaping company recently bid on a project for landscaping services for a property leased to CHFS by the property management company. You were thereafter hired by CHFS as the Executive Director for the Office of Administrative and Technology Services. The Office of Administrative and Technology Services has direct responsibility for approving and managing the lease for the property between CHFS and the property management company.

You state that you have asked the property management company to withdraw your bid from consideration and have instructed your staff that you will recuse yourself from any conversations, meetings, negotiations, decisions or approvals of any leases going forward that relate to the property management company or any of its affiliates. You have further asked that your supervisor sign any documents pertaining to properties under lease with CHFS by the property management company or its affiliates

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;

KRS 11A.040(4) provides:

(4) No public servant shall 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, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by any state agency. This provision shall not apply to a contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain or to agreements which may directly or indirectly involve public funds disbursed through entitlement programs.

The Commission considered a similar question in Advisory Opinion 94-25. In that request, an employee of the Transportation Cabinet was the owner operator of a lawn care service. The lawn care service bid on a project offered by a nonprofit agency that employed handicapped individuals and that held a contract with the Transportation Cabinet to perform janitorial and mowing services on state property. We held that the employee could not contract with the company since the company held a contract with the employee's agency.

The Commission notes that your landscaping business is a subcontractor of a business that enjoys a lease with the state agency for which you work. More importantly, the landscaping services that you would be called upon to provide under your agreement with the lessor of the property are directly related to matters in which you are involved in your state employment. Thus, in providing the service, you will be enjoying part of the contract between the lessor and the cabinet in which you work.

Based upon your representations, the Commission concludes that you may not continue to provide landscaping services for the property leased by your cabinet. You may however, bid on a job for the property owner/management company as long as the project does not involve property leased by CHFS.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

Gwen R. Pinson

By Chair: Gwen R. Pinson