COMMONWEALTH OF KENTUCKY

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Executive Branch Ethics Commission
ADVISORY OPINION 09-14
March 27, 2009

RE: Is it a conflict of interest for a Property Valuation Administrator or a deputy Property Valuation Administrator to own real property in the county in which he or she is employed?

DECISION: No, within limitations.

This opinion is issued in response to your February 19, 2009 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). The matter was reviewed by the Commission on March 27, 2009 and the following opinion is issued.

You are an employee of a Property Valuation Administrator (PVA), and you are considering purchasing real property in the county in which you are employed. You seek advice from the Commission regarding whether you, as an employee for a PVA, may own real property in the county in which you are employed by the PVA. You state that many employees in your office, including yourself, have the ability to manipulate relevant property characteristics which directly affect assessment value. You further state that PVA employees are charged with the fair assessment of all county property for taxation purposes. You are concerned that having the duty to assess property, and also being a property owner responsible for paying taxes for the amount of the assessment, creates a conflict of interest.

The statutes within the Executive Branch Code of Ethics (the "Code") at issue are KRS 11A.005, KRS 11A.020 and KRS 11A.030.

KRS 11A.005 provides the following:

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

(a) A public servant be independent and impartial;

(b) Government policy and decisions be made through the established processes of government;

(c) A public servant not use public office to obtain private benefits; and

(d) The public has confidence in the integrity of its government and public servants.

(2) The principles of ethical behavior for public servants shall recognize that:

(a) Those who hold positions of public trust, and members of their families, also have certain business and financial interests;

(b) Those in government service are often involved in policy decisions that pose a potential conflict with some personal financial interest; and

(c) Standards of ethical conduct for the executive branch of state government are needed to determine those conflicts of interest which are substantial and material or which, by the nature of the conflict of interest, tend to bring public servants into disrepute.

KRS 11A.020 provides in relevant part as follows:

(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.

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

(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.

The Code in KRS 11A.005(2)(a) recognizes that in addition to official duties, public servants also have personal business and financial interests. For a PVA or deputy PVA, owning real property in the county of employment is not in and of itself a conflict of interest. A conflict would only arise if the PVA or deputy took some action in his or her official capacity to further a personal interest. The Legislature contemplated this potential conflict of interest for PVA's and deputies and enacted KRS 132.470, which provides, "The property valuation administrator shall assess his own property and that of his deputies, and shall be governed by the laws applicable to the assessment of the property of other taxpayers. The county board of assessment appeals shall review the assessment of the property of the property valuation administrator and his deputies." Every member of a county board of assessment is required by KRS 133.020(2) to have extensive knowledge of real estate values, preferable in real estate appraisal, sales, management, financing, or construction. KRS 133.030(2) requires that the county board of assessment appeals shall at its first regular meeting review the assessment of the property valuation administrator and his or her deputies, and also receive mandatory orientation and training developed by the Department of

Revenue and delivered by a PVA or a deputy PVA.

This situation is different than that addressed by the Commission in Advisory Opinion 05-22, in which the Commission determined that PVA's should not perform real estate appraisals or serve as real estate brokers in the county in which he or she is the PVA. In regard to owning property in the county in which the PVA or a deputy is employed, the Legislature considered this and enacted a mandatory procedure of review for the assessment of those properties. The Commission still believes that the PVA and deputy PVA's should not be involved in the buying and selling of property as a business practice in the county in which they are employed, but recognizes that the ownership of property in and of itself does not present a conflict of interest.

If the PVA and deputies have the ability to manipulate relevant property characteristics which directly affect the assessed value, and if the Department of Revenue has reason to believe that this is occurring in a manner that violates Kentucky law, then the agency may want to consider issuing a policy to minimize the likelihood of this occurring, and to guide its employees in complying with the law. For example, in PVA offices of a certain size, it may be possible for the agency to preclude a deputy PVA from involvement with property owned by the deputy or a family member. The same result could also be accomplished by the deputy abstaining in writing as provided in KRS 11A.030.

Additionally, separate from the mandatory training program developed by the Department of Revenue and delivered by PVA's as required by KRS 133.030(2) and as more fully described in KRS 133.020(5), if there is reason for concern, the Department of Revenue may want to consider providing written guidance to the county board of assessment members on how to detect when a PVA or deputy has manipulated characteristics related to his or her property or property owned by a family member in a way that violates Kentucky law.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

Gwen R. Pinson

By Chair: Gwen R. Pinson