



COMMONWEALTH OF KENTUCKY  
**EXECUTIVE BRANCH ETHICS COMMISSION**

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Executive Branch Ethics Commission  
**ADVISORY OPINION 21-04**  
March 17, 2021

**RE:** The Department for Behavioral Health, Developmental and Intellectual Disabilities for the Cabinet for Health and Family Services seeks guidance concerning the proper procedures to follow to limit conflicts of interest of one of its employees related to outside entities for which the spouse of the employee works that have contracts with or receive grants from the Department.

**DECISION:** The Commission provides a review of the conflict of interest provisions in the Executive Branch Code of Ethics and approves the Department's intended course of action to limit and mitigate conflicts of interest in two scenarios.

This opinion is issued in response to your March 2, 2021, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 17, 2021 meeting of the Commission and the following opinion is issued pursuant to KRS 11A.110(1) and KRS 11A.030(5).

You represent the Department of Behavioral Health, Developmental and Intellectual Disabilities ("DBHDID") within the Cabinet for Health and Family Services ("CHFS") in submitting this request to the Commission. You ask for guidance in limiting conflicts of interest related to one of the employees of your agency to ensure compliance with the Executive Branch Ethics Code of Ethics codified at KRS Chapter 11A ("the Ethics Code).

You provide the following information and scenarios you wish for the Commission to review. DBHDID's mission is to provide leadership, in partnership with other outside entities, to prevent disability, build resilience in individuals and their communities, and facilitate recovery for people whose lives have been affected by mental illness, intellectual disability, other developmental disabilities, or substance abuse. The Department is federally funded and is designated as the state's mental health and substance use authority for the Commonwealth. DBHDID contracts with outside entities to assist with carrying out this mission.

You have an employee who works within the Department that issues these contracts for the services provided by the outside entities, hereinafter referred to as "the Employee." Two scenarios have arisen involving the Employee's spouse, hereinafter referred to as "the Spouse," for which you are requesting review by the Commission:

- (1) The Spouse works for the regional community mental health program (hereinafter referred to as "the Program") that is a publicly-funded 501(C)(3) that engages in business with the Commonwealth pursuant to contracts and state grants awarded through KRS Chapter 210 as well as competitively awarded federal grants. The Spouse works on one of these grants. The Spouse receives compensation from the behavioral health provider in the form of salary and benefits, but does not own any portion of the business or profit-sharing. The Spouse does not sit on the board of directors nor does the Spouse have control or rights pertaining to the Program. The Spouse worked at the Program under this contract prior to the Employee beginning employment with the DBHDID and prior to marrying the Spouse.
- (2) DBHDID contracts with the Hazelden Betty Ford Foundation ("HBFF"), which is an out-of-state 501(C)(3), to provide behavioral health services in the Commonwealth. HBFF, in its own discretion and independently of the Commonwealth, hired the Spouse as a consultant/sub-contractor to meet the deliverables of the contract between HBFF and DBHDID.

You have further indicated related to both of the scenarios that DBHDID has established firewalls to ensure that the Employee does not have a role in any selection, contracting, administration, or oversight of the businesses or services provided by the entities in both scenarios.

KRS 11A.005 provides the statement of public policy for the application of the Executive Branch Code of Ethics (the Ethics Code):

- (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.

The Ethics Code addresses conflicts of interest by prohibiting certain conduct on the part of public servants in KRS 11A.020(1), which states 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;
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- (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 considerations for public servants to follow when determining when to abstain from action on an official decision in which the public servant may have a conflict of interest:

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.

Whenever conflicts of interest arise, public servants must take their guidance from KRS 11A.020(1)(a), KRS 11A.020(2) and (3), and KRS 11A.030. These statutes provide guidance to mitigate conflicts of interest. KRS 11A.030 provides a list of questions to determine whether a conflict exists. KRS 11A.020(3) provides a course of action for a public servant to take if the public servant determines after reviewing KRS 11A.030 that abstention from the official decision is necessary due to a present conflict of interest. Finally, KRS 11A.020(1)(a) provides the prohibited conduct when a public servant fails to recuse from an official decision in a matter in which the public servant had a present and substantial conflict of interest between their official duties and their private interest. Additionally, the Commission has defined the term "matter" in 9 KAR 1:025, Section 1(4), as "any measurable case, litigation, decision, grant, proceeding, application, determination, contract, claim, investigation, charge, or legislative bill."

With these provisions under consideration, the "matter" in each scenario would be the contracts that DHBDID entered with the Program and HBFF. In the first scenario, it could be argued that the Employee has a personal interest in the contract with the Program because the Spouse's employment could be directly benefited by the Program receiving the contract or continuing to receive the contract from the Department. Therefore, it is appropriate and recommended that the Employee recuse from any decision-making by the Department concerning the renewing or continuation of the contract with the Program. The Employee should be cognizant to recuse from all discussions about the renewal or continuation of the contract and the implementation and oversight of the contract with the Program.

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In the second scenario, even though the contract with HBFF is the matter, HBFF independently decided on the hired consultant. Therefore, any possible conflicts of interest are mitigated by the degree of separation between DHBDID and the hired consultant. As such, the Employee does not have an actual conflict of interest related to the contract with HBFF. As such, the Employee is not technically required to recuse or abstain from the matter involving HBFF. Nevertheless, your agency has decided to operate under an abundance of caution and establish firewalls to ensure the Employee's recusal from both matters in the scenarios presented. Therefore, the Commission supports your intended plan to limit and mitigate all potential for conflicts of interest related to the Employee and the Spouse.

**EXECUTIVE BRANCH ETHICS COMMISSION**

  
By Chair: Judge Roger L. Crittenden (Ret.)