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EXECUTIVE BRANCH ETHICS COMMISSION

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Executive Branch Ethics Commission
ADVISORY OPINION 21-06
May 19, 2021

RE: May a Property Valuation Administrator use their real estate license to market and sell their own property and purchase a personal residence in the county where they serve as the PVA?

DECISION: Yes.

This opinion is issued in response to your March 22, 2021, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 19, 2021 meeting of the Commission and the following opinion is issued pursuant to KRS 11A.110(1) and KRS 11A.030(5).

You ask whether, as a Property Valuation Administrator (PVA), you may use your real estate license to market your own home for sale in the county where you serve as PVA. You also may request whether you may use your license to purchase a home. You have a brokerage license as well. You further ask that if the Commission indicates that you may use your real estate license, you ask whether you should form your own brokerage or affiliate with another existing brokerage. In order to use your real estate license, you must also be part of a brokerage.

The Commission has never answered this specific question; however, the Commission has answered similar questions in the past when interpreting the conflict of interest provisions in KRS 11A.020(1)(a), (2), and (3), as well as KRS 11A.030. In Advisory Opinion 98-11, the Commission concluded that:

[A] conflict of interest will exist if, as a part of your official duty, you are involved in valuing property, and you also market such property as part of your private business and receive a financial

gain based on the value or selling price of the property. Such authority to value property which you are attempting to sell privately may give you an advantage over the general public.

The Commission revisited this question in Advisory Opinion 05-22, stating that:

[I]t is the opinion of the Commission that a conflict of interest would exist for the PVA, whose duty it is to appraise property within his county, to market such property, either personally or through sales associates, as part of his private business through which he would receive a financial gain based on the value or selling price of the property.

Such authority to value property that the PVA is attempting to sell, either directly or indirectly, could give the PVA an advantage over the general public.

In Advisory Opinion 09-14, the Commission answered the question of whether a PVA could own property in the county where they serve as the PVA. In that opinion, the Commission stated:

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 Commission re-affirmed their commitment to the reasoning in Advisory Opinions 98-11 and 05-22 when it further stated:

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.

PVAs are charged with appraising all property that lays within their own counties. That includes appraising your own property. To alleviate this potential conflict of interest, the General Assembly enacted KRS 132.470, which provides that:

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

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assessment of the property of the property valuation administrator and his deputies.

Further, KRS 133.020(2) required that “each member of the county board of assessment appeals have extensive knowledge of real estate values, preferable in real estate appraisals, sales, management, financing, or construction.” All of the provisions work in play to limit the inherent conflicts of interest that exist for a PVA in conducting personal business in their own counties.

In each of the previous Advisory Opinions in which the Commission concluded that PVAs could not be involved in the marketing, buying, and selling of property in the county in which they are employed, the Commission specifically mentioned that this should not be done as part of a “private business” or as a “business practice.” Your question presents a unique issue because you are requesting permission to sell your personal home, but not to engage in this conduct as a private business or business practice.

While serving as a PVA, you placed your real estate license in escrow. You wish to remove it from escrow for selling your personal home. You stated in your initial request to Commission staff that if you were able to use your license to sell your home yourself, you could save “a couple thousand dollars.” You later clarified that you are referring to the fees that are paid to the realtor in a real estate transaction. You also provided further information that you could save on fees in both the sale of your existing home and purchase of your new home.

The Commission staff conferred with the legal counsel for the Kentucky Real Estate Authority (KREA) to review your proposed course of conduct to ensure that Kentucky real estate law would not prohibit your intended course of conduct. The KREA legal counsel indicated that your plans do not violate the Kentucky real estate law codified at KRS Chapter 324 and 201 KAR Chapter 11. However, he did caution that you should take every effort to abide by the disclosure provisions contained in KRS 324.160(4)(e)(2) and (3), and KRS 324.160(4)(m).

The Commission believes that it would not be a conflict of interest for a PVA to use their real estate license for the limited purpose of marketing and selling their own personal residence and purchasing a new personal residence. However, the PVA should not use the real estate license in the marketing or selling of real estate beyond the sale and purchase of their personal residences. Furthermore, the Commission recommends that you create your own brokerage rather than affiliating with another existing brokerage to limit your potential conflicts of interest.

The protections provided in KRS 133.020(2) for oversight in the PVA’s valuation of their own property, the disclosure provisions in KRS 324.160 for real estate licensees, and the

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fact that the selling of your personal home is not part of a private business or business practice differentiate this situation from the previous similar questions answered by the Commission.

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