



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION

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Executive Branch Ethics Commission
ADVISORY OPINION 21-12
November 18, 2021

RE: The Kentucky Department of Agriculture (KDA) requests guidance from the Commission on the following questions:

- (1) May an employee of the KDA or their family member apply for a grant from the Kentucky Agriculture Development Board (KADB), an entity that is administratively attached to the KDA?
- (2) May a KDA employee or their family member apply for a county program that is run by a county administrator group that is independent from the KADB, but receives funds from the KADB?

DECISION:

- (1) No, a KDA employee, their spouse, and their child would be prohibited by KRS 11A.040(4) from accepting grants from the KADB; however, the extended family of the KDA employees may apply and accept grants from KADB as long as the grants will not benefit the KDA employee in whole or in part.
- (2) Yes, a KDA employee and their family may apply for and accept grants from the county programs.

This opinion is issued in response to your October 1, 2021 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the November 18, 2021 meeting of the Commission and the following opinion is issued pursuant to KRS 11A.110(1).

On behalf of the Kentucky Department of Agriculture (KDA), you request that the Commission provide guidance related to the 2021 legislation to place the Kentucky Agriculture Development Board (KADB) as an administratively attached agency of the KDA and the

resultant impact of that attachment on the programs of the KADB as they relate to employees of the KDA.

To assist the Commission in the review of these issues you provide the following information:

The KADB has existed for over twenty years and was previously administratively attached to the Governor's Office of Agriculture Policy. However, in 2021, Senate Bill 3, as enacted in KRS 248.701 through 248.727, placed the KADB as an attached agency of the Kentucky Office of Agriculture Policy, a division of the KDA. The KADB is now operated by KDA employees, including an executive director who reports solely to the Commissioner of Agriculture. The Commissioner of Agriculture serves as the chair of the KADB.

The KADB administers the agricultural development fund deriving from the tobacco settlement agreement fund as provided in KRS 248.703. KADB has three program areas: State, County, and Hybrid. See KRS 248.707. Each program contains several different project possibilities. State and hybrid program applications are directly received by the KADB. Applications to the KADB are open to any person in Kentucky as dictated by KRS 249.711. However, county programs are handled by county agricultural development councils and are attached to the county cooperative extension services. See KRS 248.721. The county councils accept applications for projects from groups and must prioritize how they would like their statutory county fund allocation to be spent. The KADB reviews the county councils' plans for each county and provides technical assistance pursuant to KRS 248.725.

A very popular project area is the County Agriculture Investment Program (CAIP). CAIP grants can be used for many things, including eligible equipment cost share. County Programs are open typically to farmers or agriculture entities. For a CAIP project, a group (for example a local conservation group) would apply to the county committee to be the administrator of the project. If approved and funds allocated by the KADB based on the county committee recommendation, the CAIP administer group would accept applications for the program. The administrator group would review and rank applications, award grants, collect proof of completion, and disperse funds to the individual applicants.

Based on this information, you ask for guidance from the Commission for the following questions:

- (1) May a KDA employee or their family member apply for a state project to a board attached and staffed by employees of the KDA?*
- (2) May a KDA employee or their family member apply for a county program that is run by a county administrator group that is independent from, but receives funds from the KADB?*

The Executive Branch Code of Ethics (the Ethics Code) provides provisions that prohibit certain conduct of public servants. KRS 11A.040 provides in pertinent part as follows:

- (3) A public servant shall not knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business or regulatory action with himself or herself, or with any business in which he or she or a member of his or her family has any interest greater than five percent (5%) of the total value thereof.
- (4) A public servant shall not knowingly himself or herself or through any business in which he or she owns or controls an interest of more than five percent (5%), or by any other person for his or her use or benefit or on his or her account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or *granted by the agency by which he or she is employed or which he or she supervises*, subject to the provisions of KRS 45A.340. *This provision shall not apply to:*
 - (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
 - (b) *Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or*
 - (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or
 - (d) *Purchases from a state agency that are available on the same terms to the general public or that are made at public auction; or*
 - (e) Sales of craft items to a state park by interim state employees designated as craftspeople under KRS 148.257.

(emphasis added). The language in KRS 11A.040(4) appears to prohibit a public servant from accepting a grant from the agency for which the public servant is employed. However, the exceptions do allow for a public servant to accept benefits through entitlement programs and accept purchases from a state agency that are available on the same terms as they are to the public.

Your questions seem to ask whether KDA employees may apply to the grant programs administered by the KADB on the state level and the county agricultural development councils on the county level. The Commission will first address the grant programs on the state level and then address the issues presented at the county level.

KRS 11A.040(4) prohibits public servants from receiving grants from the state agency for which they work, unless one of the exceptions applies. KADB operates a grant program arising out of the agricultural development fund. The question for the Commission is does the

KADB grant program fulfil one of the exceptions that would allow KDA employees to participate in the program. A cursory review would indicate that KRS 11A.040(4)(a) would not apply as the program does not involve eminent domain. Similarly, KRS 11A.040(4)(c) involves the programs of other state agencies, as such, this exception has no application in this scenario. KRS 11A.040(4)(e) involves craftspersons and is not applicable in this scenario. As such, the two exceptions that merit further review are KRS 11A.040(4)(b) and (d).

KRS 11A.040(4)(b) concern entitlement programs. The Commission must determine whether the KADB grant program is an entitlement program. KADB administers the grant program to assist tobacco farmers and communities in counties most affected by the loss in tobacco income. KADB determines eligibility pursuant to KRS 248.711, which requires that tobacco farmers be given priority, small farmers have equal access to the funds as large farmers, and consideration be given to what percent of a county's allocation of moneys an applicant is requesting. Any individual, group, educational institution, governmental entity, cooperative, and other entities are eligible to receive moneys from the fund. As such, anyone, who has the requisite qualifications, may apply to receive the funding. The Oxford dictionary defines "entitlement program" as a "government program that guarantees certain benefits to a particular group or segment of the population." The KADB grant program, although important, does not confer a right to eligible applicants to receive the benefits. The KADB may determine an entity is eligible, but may, in its discretion decide to not issue the grant. Therefore, the KADB grant program is not an entitlement benefit.

KRS 11A.040(4)(d) concerns purchases from state agencies. To purchase an item from an agency would require the private citizen or entity to acquire something from the state agency in exchange for payment by the purchaser. The KADB grant program does the opposite in that the KADB confers funds to the grantee. As such, the provision does not apply.

Therefore, none of the exceptions in KRS 11A.040(4) would apply to allow and employee of KDA employee to accept a grant from the KADB grant program. This would apply to any business that is owned by a KDA employee in which the public servant owns or controls an interest of more than five percent (5%), or by any other person for his or her use or benefit or on his or her account.

As for whether a KDA employee's family members may apply to the KADB grant program, "family members" as defined by KRS 11A.010(4), except for the spouse or child of the KDA employee, may apply to the KADB grant program as long as their receipt of the grant funds would not benefit, in whole or in part the public servant who works for KDA. However, KRS 11A.040(4)(c) would prohibit a KDA employee's spouse or child from doing business with the KDA. Pursuant to the definition of "doing business with" in KRS 11A.010(14) this would include "accepting a grant" from the KDA. Therefore, the spouse or child of a KDA employee would be equally prohibited from accepting a KADB grant.

As to your second question concerning whether a KDA employee or their family member may apply for a county program that is run by a county administrator group that is independent from, but receives funds from the KADB, this question is a simpler matter. As the county councils operate independently of the KDA once they receive the funds, then the grants to the KDA employee or their family would not be coming from the KDA itself. Therefore, the KDA employees and their families may apply for grants from the county programs and would not be limited by KRS 11A.040(4).

In conclusion, to specifically answer your questions, the Commission provides as follows:


- (1) May a KDA employee or their family member apply for a state project to a board attached and staffed by employees of the KDA?

ANSWER: No, a KDA employee, their spouse, and their child would be prohibited by KRS 11A.040(4) from accepting grants from the KADB; however, the extended family of a KDA employee may apply and accept grants from KADB as long as the grants will not benefit the KDA employee in whole or in part.

- (2) May a KDA employee or their family member apply for a county program that is run by a county administrator group that is independent from, but receives funds from the KADB?

ANSWER: Yes, a KDA employee and their family may apply for and accept grants from the county programs.

EXECUTIVE BRANCH ETHICS COMMISSION


By Chair Judge Roger L. Crittenden (Ret.)