

Executive Branch Ethics Commission

**ADVISORY OPINION 00-3**

February 25, 2000

Re: May executive branch employee own stock or other interest in an entity that does business with his employing state agency?

Decision: Yes, within limitations.

This opinion is in response to your January 18, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 25, 2000, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. The Medical Director for the Department of Corrections (the "Department") invested \$3,000 to become a stockholder in Quality Surgical Solutions. You state the Medical Director's investment represents less than 5% stock ownership of the company. Quality Surgical Solutions may be expanding services and going public with their stock. Additionally, the company desires to develop a contractual relationship with the Department with which you state the Medical Director may have to be involved.

The Medical Director is concerned that the above may interfere with his employment with the Department and is seeking advice regarding possible conflicts of interest with his participation with the possible contract and with his stock ownership.

In Advisory Opinion 95-15 (a copy of which is enclosed), the Commission stated it believed that, in most situations, it is a conflict of interest for an employee, his spouse or dependent children to own an interest with a value of at least \$10,000 or which constitutes five percent (5%) of an entity which is regulated by or does business with his employing agency, unless:

1. The stock or other interest is purchased exclusively through participation in a publicly traded mutual fund where the purchasing and selling decisions are completely out of the control of the employee or spouse;
2. The company or other entity does business with the employee's agency on a limited basis. "Limited basis" means the entity does not receive more than \$5,000 in state funds in any one calendar year from the employee's agency;
3. In his state employment, the employee is not directly involved in any matters (regulatory, business or other) concerning the company or other entity of which he owns an interest.

In addition, KRS 11A.040(4), which has been amended since the issuance of Advisory Opinion 95-15, prohibits an employee from owning more than five percent (5%) of a corporation (or any other entity) that does business with the agency by which he is employed.

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, 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 is employed or which he supervises, subject to the provisions of KRS 45A.340.

Therefore, if Quality Surgical Solutions develops a contractual relationship of over \$5,000 with the Department, the Medical Director will need to determine if divestiture of his stock is necessary. Divestiture would be necessary if the stock value increases to a value of over 5% ownership of the company, or if the Medical Director is directly involved with matters concerning the contract and his stock value increases to a value of over \$10,000 or exceeds 5% ownership of the company.

Additionally, the Department is not prohibited from implementing in-house policies regarding the ownership of stock with a value of less than \$10,000.

Also, included for your review is Advisory Opinion 97-2.

Enclosures:      Advisory Opinion 95-15

                          Advisory Opinion 97-2