

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-12
February 25, 2000

RE: May spouse of deputy cabinet secretary be appointed to major management position in an agency within the Cabinet?

DECISION: Yes, within limitations.

This opinion is in response to your January 11, 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 spouse of the deputy secretary of the Education, Arts and Humanities Cabinet has applied for a senior management position with the Kentucky Historical Society, an agency within the Cabinet. The spouse has been selected as one of the top three applicants and is to be interviewed by the secretary of the Governor's Executive Cabinet. The governor will appoint an applicant to this non-merit position. You ask whether such an appointment would be prohibited by the Executive Branch Code of Ethics.

KRS 11A.020(1)(a), (c) and (d) provide:

(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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(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.

Additionally, KRS 11A.020(3) provides:

(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.

The Commission assumes that the deputy secretary has had no involvement in matters relating to this position.

If the deputy secretary wishes to avoid the appearance of any conflict of interest, the Commission advises the spouse to withdraw from consideration for the position. However, if the spouse should remain in consideration for the position, the Commission advises, further, that the deputy secretary have no involvement in the appointment of an applicant to this position.

If the spouse is selected for the position, the deputy secretary should abstain from all matters regarding the state agency by which the spouse is employed. Such abstention should be disclosed in writing, and matters regarding the state agency should be managed by the Secretary of the Education, Arts and Humanities Cabinet or by someone not under the deputy secretary's supervision. Such abstention is necessary because the position is a major management position within the agency.