

Executive Branch Ethics Commission
ADVISORY OPINION 00-16
February 25, 2000

Re May new employee own stock in company that he will regulate as part of his official duty?

Decision: Not over a value of \$10,000, unless the stock is in a mutual fund.

This opinion is in response to your February 10, 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 Public Service Commission seeks to employ an individual in the Division of Financial Analysis on March 1, 2000. The individual was previously employed by LG & E Energy Corporation, an entity whose utility operations are regulated by the Public Service Commission. The position at the Public Service Commission will require him to work on cases directly concerning LG&E. The individual's retirement plan consists of LG&E stock that he has transferred from a 401K account to an Individual Retirement Account ("IRA"), for which Hilliard Lyons is trustee. He is also a member of the Board of Directors of the Kentucky Utilities Employees Federal Credit Union. You ask the following questions:

- *Must the individual instruct the trustee of his IRA to sell all shares of LG&E stock?*
- *Must the individual resign his position on the Board of Directors of the Credit Union?*

In Advisory Opinion 95-15 (a copy of which is enclosed), the Commission stated that an employee, his spouse and his dependent children should not own an interest with a value of over \$10,000 or which is at least 5% of an entity that is regulated by or does business with the state agency for which the employee works. The Commission also stated, however, that such stock or other interest may be purchased or retained if the purchase is exclusively through participation in a publicly traded mutual fund where the purchasing and selling decisions are completely out of control of the employee. Therefore, unless the stock is part of a mutual fund, where the individual is unaware of the stock transfers, he must divest himself of any shares of stock owned with a value that exceeds \$10,000.

KRS 11A.020(1)(a) provides:

- (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;

Regarding the individual's service on the board of directors for the credit union, Advisory Opinion 93-37 (a copy of which is enclosed) prohibited the Commissioner of Agriculture from serving on the board of directors of an insurance firm due to the firm's providing loans to farmers (individuals regulated by Agriculture). Similarly, the Commission believes that the individual should not serve on the board of the credit union because he will potentially be involved in transactions involving employees of utilities regulated by the Public Service Commission. Such service appears to present a conflict between his duties in the public interest and the welfare of the credit union employees he would represent.

Furthermore, we have included Advisory Opinion 98-31, which provides guidance regarding the individual's involvement with LG&E as a part of his official duty for the Public Service Commission.

Enclosures: Advisory Opinion 95-15
 Advisory Opinion 93-37
 Advisory Opinion 98-31