

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-56
September 22, 2000

RE: Should employee be excluded from serving on any selection committee because of child's impending job search?

DECISION: No.

This opinion is in response to your September 6, 2000, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 22, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. An employee in the Division of Engineering, Department for Facilities Management, Finance and Administration Cabinet, has requested advice as to the propriety of his serving on architectural/engineering selection committees created under KRS 45A.810. Currently, all Division of Engineering architects and engineers serve in a "pool" of potential selection committee members. The "pool" is made up of 11 architects and 8 engineers. Names are selected at random and assigned to a committee for service in selecting an architect or engineer for a capital construction project. Given the number of capital construction projects requiring architectural/engineering services means that each "pool" member ends up serving many times over the course of a year.

The employee has a child who is entering the last year of study at the University of Kentucky College of Architecture and will undoubtedly be seeking post graduation employment as an intern architect. If the employee's child should obtain employment with an architectural firm, it is very likely that the firm will be doing business with the Commonwealth. You ask whether or not the employee should be excluded from serving on any selection committee because of the child's impending job search.

Additionally you ask, under what conditions and circumstances may a state architect or engineer employee's children seek employment with a professional design firm without violating the Executive Branch Code of Ethics and without creating a hardship on either the employee or his children.

KRS 11A.020 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;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (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.

In Advisory Opinion 98-1 (a copy of which is enclosed), the Commission stated that the son of the State Highway Engineer, Transportation Cabinet, was not prohibited from seeking employment with a firm or firms that do business with the Transportation Cabinet; however, the Commission advised that the State Highway Engineer should refrain from any contact with firms concerning his son's potential employment and should abstain from any involvement in matters concerning the firm or firms by which his son is employed and disclose this intention in writing as required by KRS 11A.020(3) as provided below:

- (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.

Similarly, the employee in the Division of Engineering should refrain from any contact with architectural firms concerning his child's potential employment. The employee is not prohibited from serving on a selection committee even though his child is seeking employment with an architectural firm. However, the Commission advises that the employee may want to voluntarily abstain from matters on a selection committee that he believes may pose a conflict for him. Additionally, the Division of Engineering is not prohibited from implementing in-house policies regarding service on selection committees due to potential conflicts of interest.

Upon employment of his child by an architectural firm, KRS 45A.835 appears to prohibit the employee from further serving in the pool if the firm has been prequalified to bid on providing service for capital construction projects for the Commonwealth.

The Commission believes that such abstention by the employee should not create a hardship on the employee or his family and will be in compliance with the Executive Branch Code of Ethics.

Enclosure: Advisory Opinion 98-1