

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 01-8
March 30, 2001

RE: Is a conflict of interest created if a mine inspector's spouse has an agreement with a coal company?

DECISION: No, provided the mine inspector has no involvement with coal company as part of his official duty.

This opinion is in response to your March 5, 2001, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 30, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Department of Mines and Minerals (the "Department"), Public Protection and Regulation Cabinet, as a mine inspector for a regional office of the Department. Your spouse recently inherited one-fourth of an interest in 60 acres of land on which a coal company plans to mine in the near future. The officials of the coal company have been in contact with your spouse, but due to your job as a mine inspector, you have not been involved in the agreement with the coal company. You will not be inspecting this mine or any other mine owned by the coal company with which your spouse has an agreement. In order to avoid a conflict of interest, you ask for advice concerning this matter.

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;

Also, 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. 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.

Additionally, in Advisory Opinion 00-20, the Commission stated that an employee and his spouse are prohibited from owning more than 5% of an entity that is regulated by the state agency for which the employee works, unless neither the employee, nor anyone under his supervision, is directly involved in any matters concerning the entity of which he or his spouse own an interest.

Because it appears that you will not have any involvement, as part of your official duty in the regulation of the coal company, the Commission believes that a conflict of interest will not exist if you or your spouse has an agreement with the coal company to allow it to mine the land. However, no one under your supervision should be involved in the regulation of the coal company, and you should take great care not to discuss with other mine inspectors any matters concerning the coal company.

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Furthermore, the Commission recommends that you check with your Department's ethics officer to ascertain that such ownership does not violate any internal policies that the Department may have developed.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Bertie Oldham Salyer, M.A., A.M.E.