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BOYCE A. CROCKER

ADVISORY OPINION 01-13

May 11, 2001

RE: Are members of the Agricultural Development Board subject to the Executive Branch Code of Ethics?

DECISION: No, but they will be subject to the Board's internal ethics policy, upon adoption.

This opinion is in response to your March 26, 2001, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 11, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You represent a member of the Agricultural Development Board (the "Board"). The member owns 15 shares out of a total of 4900 shares of a company (the "Company") that has applied for funds from the Board. In addition to the member's 15 shares, his son and other family members own a total of 60 shares, less than 2% of the shares of the Company.

In addition, the member is president of a Kentucky C corporation, and also owns 50% of the outstanding shares of the corporation. The Company owns the other 50% of the outstanding shares.

You ask for an opinion from the Commission on the inapplicability of Chapter 11A as it applies to members of the Board, as well as an opinion on the potential for conflicts of interest by the member's service on the Board. You have provided to the Commission a copy of a code of ethics proposed by the Board for its members and state that the Board plans to ask the Commission to review the policy.

Pursuant to Advisory Opinion 93-53 (a copy of which is enclosed), the members of the Board are not subject to the Code of Ethics. However, it appears that the Board recognizes that potential conflicts of interest exist for Board members in the conduct of their official duties, and thus the Board has taken steps to implement a code of ethics for its members. The Commission

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advises the member to abide by this internal ethics policy in carrying out his service for the Board, upon its adoption by the Board.

Specifically, based on the draft of the ethics policy for the members of the Board, the Commission believes that although the member's interest in the Company is less than 5%, and thus the Company is not prohibited from having an agreement with the Board to receive funds, an appearance of a conflict of interest may exist for the member if the Company seeks funds from the Board. Such an appearance is duplicated by the ownership that the Company has in the corporation of which the member is the president.

The draft code of ethics provides the following:

- (1) *No Board member, 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;*
- ...
- (2) *If a Board member appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude he is using his official position to further his professional or private interest.*

The Commission believes that if the Company does seek funds from the Board, that the member, at a minimum, should disclose his potential conflict to the Board and abstain from action on matters relating to the company. Such action will help to remove any real conflicts of interest, although the appearance of one may still exist. The Commission advises the member to consider what effect such action would have on the public confidence in the integrity of the Board.

The draft code of ethics provides the following guidance when considering whether to abstain from action on a matter:

In determining whether to abstain from action on an official decision because of a possible conflict of interest, a Board member should consider the following guidelines:

- (1) *Whether a substantial threat to his independence of judgment has been created by his personal or private interest;*

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(2) *The effect of his participation on public confidence in the integrity of the Board;*

(3) *Whether his participation is likely to have any significant effect on the disposition of the matter;*

(4) *The need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the Board or*(5) *Whether the official decision will affect him in a manner differently from the public or will affect him as a member of a business, profession, occupation, or group to no greater extent generally than other members of such business, profession, occupation, or group.*

Additionally, the Commission provides Advisory Opinion 00-60 for your review.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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

Enclosures Advisory Opinion 93-53
 Advisory Opinion 00-60