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BOYCE A. CROCKER

ADVISORY OPINION 01-15

May 11, 2001

RE: May an employee have a compensation agreement with a company that he inspects as part of his official duty?

DECISION: No.

This opinion is in response to your April 6, 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. An employee of the Department of Housing, Buildings and Construction, State Fire Marshal's Office, Hazardous Materials Section, has entered into an agreement with a local Kwik Mart in which the Kwik Mart has agreed to pay the employee one cent per gallon of fuel sold during a fifteen year period in exchange for consulting work provided by the employee. The Kwik Mart is a business that the employee directly inspects and regulates as part of his official duty. You ask whether such an arrangement presents an ethical problem for the employee.

KRS 11A.020(1) 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

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(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 99-31 (a copy of which is enclosed), the Commission stated that if a “forest ranger is involved in any way, as part of his official duty, in regulating a private landowner... , then he should not accept compensation from the landowner.” Similarly, the Commission believes that if the employee is involved in inspecting or regulating the Kwik Mart, then he should not have an agreement with the Kwik Mart to receive a portion of the proceeds of fuel sold at the Kwik Mart for consulting services provided. Such service for compensation presents a conflict of interest for the employee in the conduct of his official duty.

Furthermore, based on Advisory Opinion 96-18 (a copy of which is enclosed) which provides that an employee should not review or be involved in audits of coal companies that are in competition with a company for which the employee wishes to work privately, the Commission believes that if the employee continues to receive such compensation from the Kwik Mart, then he should not inspect or regulate the Kwik Mart or any other entity that may be in competition with the Kwik Mart.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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

Enclosures: Advisory Opinion 99-31
Advisory Opinion 96-18