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BOYCE A. CROCKER

ADVISORY OPINION 01-17

May 11, 2001

RE: Does conflict of interest exist for Division Director who leases land to cellular telephone provider?

DECISION: Yes.

This opinion is in response to your May 4, 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 are the administrator for the Kentucky Airport Zoning Commission ("KAZC"). The KAZC has regulatory authority over cellular antenna towers through the issuance of permits. As part of your job responsibilities, you are required, by regulation (602 KAR 50:115), to investigate possible violations of orders issued by the KAZC, including violations of aviation obstruction lighting requirements.

You state that your immediate supervisor, the Director of the Division of Aeronautics, has leased land to a cellular telephone provider. He recently has become involved in the regulatory process of controlling construction, alteration, and obstruction of lighting requirements of cellular antenna towers, also. Thus, it is possible that the Division Director could be involved in regulating the cellular telephone provider from which he receiving revenue. You ask whether such a situation presents an ethical conflict.

KRS 11A.020(1)(a) and (d) provide:

- (1) No public servant, by himself or through others, shall knowingly:

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(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;

...

(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.

Additionally, KRS 11A.040(3) provides:

(3) No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business or regulatory action with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.

If the Division Director has the responsibility to regulate cellular antenna towers and he also owns land that he leases to a cellular telephone provider that he may regulate, a potential conflict of interest between his private interests and his duties in the public interest exists. The financial gain the Division Director receives from the lease of his land will continue only if the cellular telephone provider is successful.

The Commission envisions circumstances where conflicts of interest could arise where the Division Director could use his position to give the cellular telephone provider an advantage. Thus, the Commission believes that the Division Director should not lease land to a cellular telephone provider and also be involved in the regulation of the provider.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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