

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-24

March 22, 2002

RE: May a state employee serve as a member and/or chair of a local area development district?

DECISION: No, if the employee is considered a "state officer" or "deputy state officer."

This opinion is in response to your March 18, 2002, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 22, 2002, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. An employee within the Department of Agriculture (the "Department") is a member of a local area development district (the "ADD") board, and was recently elected chairman of the ADD board of directors. This employee is an unclassified, non-merit, Principal Assistant II with the Department, and by virtue of his position is considered to be an "officer" for purposes of the Executive Branch Code of Ethics (the "Code"). According to your recounting of a press release, the employee's duties as Chairman of the ADD board will include representing the ADD on the Kentucky Council of Area Development Districts, representing the ADD at state and national conferences, and testifying before the Kentucky General Assembly and United States Congress on areas of interest to the region. The Department does not regulate these ADDs, though the Department has had contracts with and made grants to several ADDs in the past, but not with the ADD in question. You ask:

1. *Is the employee prohibited from serving as a member of an area development district board?*
2. *Is the employee prohibited from serving as the chairman of an area development district board?*

As you pointed out in your request, the ADDs were established pursuant to KRS 147A.050. Additionally, KRS 147A.060 mandates there be a board of directors for each ADD.

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Regarding the membership of the board of directors, the provisions state in pertinent part:

“...A person who is a state officer, a deputy state officer, or a member of the General Assembly may serve only in a nonmember advisory capacity to the board of directors of an area development district.”

This raises the question as to whether the employee is a state officer or deputy state officer, because if so, he would be prohibited from being either a member or chair of the ADD board of directors. Although the employee is considered an “officer” for purposes of the ethics code, the issue as to whether the employee is a “state officer” or “deputy state officer” under KRS 147A is not an interpretation under the purview of the Commission. As such, the Commission recommends you seek an opinion from the Office of the Attorney General as to whether a principal assistant in the Department would be considered a “state officer” or “deputy state officer.”

If the Office of the Attorney General finds that the employee is not a “state officer” or “deputy state officer,” and thus is not prohibited by KRS 147A from serving on the board of directors of an ADD, the Commission would then refer you to Advisory Opinion 99-22 for guidance in this matter.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY VICE CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 99-22