

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-29

June 28, 2002

RE: May "Artist in Residence" approved by the Kentucky Arts Council also be appointed to serve on the Council?

DECISION: Yes, but Council should be aware of appearance of impropriety that may exist.

This opinion is in response to your May 15, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 28, 2002 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. In March of 2002, the Kentucky Arts Council (the "Council") approved an individual to serve as an "Artist in Residence" at Southeastern Community College (the "College") for fiscal year 2003. The individual will be paid for this residency work through a matching grant from the Council to the College. In May of 2002, Governor Paul Patton appointed the same individual to serve a four-year term on the Council. You ask whether this service on the Council will pose a conflict of interest for the new member.

KRS 11A.020 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;

...

(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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In previous advisory opinions, the Commission has concluded that Board and Commission members are not considered public servants subject to the executive branch code of ethics unless the board or commission is specifically listed in the definition of “officer” found in KRS 11A.010(7). Thus, the individual serving on the Council is not subject to the executive branch code of ethics. However, the Commission cautions, to avoid any public perception of impropriety, that the individual appointed to the Council abstain from any action involving the “Artist in Residence” program as part of his service on the Council.

Additionally, the Commission believes that if a member of the Council is approved to serve as an “Artist in Residence” while serving on the Council, the public may perceive this action as a substantial conflict of interest between the Council member’s private interest and his duties in the public interest. Even though he may recuse himself from approval of the applicants, the Commission believes that if the Council members are responsible for approving such applicants for grants, they may have difficulty being objective regarding a member of the Council. Thus, the Commission recommends the Council implement an in-house policy regarding sitting Council members who also wish to serve as “Artists in Residence.” See Advisory Opinion 00-60.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.