

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-30

June 28, 2002

RE: May Executive Director serve on standards setting board and accept compensation and travel expense reimbursement?

DECISION: Yes.

This opinion is in response to your May 21, 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 1989, Congress enacted Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act to provide protection for "...Federal financial and public policy interests...". Title XI mandates certification and licensure procedures for real estate appraisers in all states and territories. Pursuant to the Act, the Appraisal Subcommittee (the "ASC") of the Federal Financial Institutions Examination Council was created. The ASC has six members designated by the heads of several federal financial agencies. One of the responsibilities of the ASC is to monitor and review practices, procedures, activities, and organizational structure of the Appraisal Foundation (the "Foundation"). The Foundation is a private, not-for-profit corporation charged by Title XI with the responsibility of establishing, improving, and promoting minimum uniform appraisal standards and appraiser qualifications criteria. The Foundation is funded by the ASC and serves as the parent organization for two independent boards established to accomplish this mission: The Appraisal Standards Board (the "ASB") and the Appraisers Qualifications Board (the "AQB"). The ASB promulgates and maintains the Uniform Standards of Professional Appraisal Practice with which all Kentucky licensed real property appraisers must comply, and the AQB sets the education and experience criteria for real property appraisers.

The Executive Director of the Kentucky Real Estate Appraisers Board (the "Board") has been encouraged to apply to serve on the ASB and the AQB. Both of these boards meet three to four times per year for two days each. At these meetings, the Executive Director would be

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compensated for daily attendance, plus be paid for actual expenses. The Executive Director plans to use annual or compensatory leave time to attend the meetings. You ask whether the Executive Director of the Board may serve on either of these boards and accept compensation and travel expense reimbursement for his service.

KRS 11A.045(1) provides:

(1) No public servant, his spouse, or dependent child knowingly shall accept any gifts or gratuities, including travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five dollars (\$25) in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

It does not appear to the Commission that the Foundation or ASB and AQB boards are organizations which primarily represent the interests of real estate appraisers, but rather are standard-setting organizations for the appraiser profession. Additionally, Kentucky Administrative Regulations (201 KAR 30:050) require that an applicant for appraiser certification pass an examination approved by the AQB, and thus no decisions are being made by Department officials regarding examination vendors.

Consequently, the Commission believes that the Executive Director is not prohibited from accepting compensation and travel expense reimbursement from the ASB or the AQB for service provided to either board. The Commission's approval of the acceptance of compensation is based on the condition that the board's duties are not conducted on state time. (See Advisory Opinions 93-49, 00-25, 00-70, 00-52 and 01-10.)

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.