

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-37

June 28, 2002

RE: May member of the Kentucky Board of Education provide professional development session for Co-op?

DECISION: No, unless severing the agreement will result in an undue burden.

This opinion is in response to your June 14, 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. A recently appointed member of the Kentucky Board of Education (the "Board") who also serves as an Associate Professor in the Department of Curriculum & Instruction at Eastern Kentucky University agreed, prior to appointment to the Board, to present a professional development session for the Southeast South Central Co-op (the "Co-op") in July. You ask whether appointment to the Board requires to the Board Member to terminate the agreement to make the presentation.

You have communicated with an attorney within the Department of Education regarding this matter, but, because of uncertainties, request a formal opinion from the Commission.

KRS 11A.010(9) and (7) define "public servant" and "officer" as follows:

- (9) "Public servant" means:
 - (a) The Governor;
 - (b) The Lieutenant Governor;
 - (c) The Secretary of State;
 - (d) The Attorney General;
 - (e) The Treasurer;
 - (f) The Commissioner of Agriculture;

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- (g) The Auditor of Public Accounts; and
- (h) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, the Council on Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection;

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

(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

(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.

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In previous advisory opinions, the Commission has advised that employees should not provide services privately for entities that they are involved in regulating or doing business with as a part of their official duties. Because the Board regulates individual school districts, and the Co-op is generally comprised of individual school districts, the Commission believes that a regulatory relationship exists between the Board and the Co-op. Seeking to provide services for a Co-op may affect the independence of the employee in the execution of regulating the school districts which comprise the Co-op and thus a conflict may exist.

The Commission suggests that the agreement with the Co-op be revoked if achievable without an undue burden on the Board member and the Co-op. If an undue burden would result in the severing of the agreement, then the Board member may honor the agreement and provide the professional development session for the Co-op because the agreement with the Co-op was made prior to the Board member's appointment. In the future, however, the Board member should not seek to provide services for any local school districts or Co-ops regulated by the Board. Additionally, for a reasonable period of time, the Board member should abstain from any matters involving any of the local school districts that comprise the Co-op for which the presentation will be made.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.