

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-49

November 22, 2002

RE: Does employee's monitoring of a DUI program that employs his brother create conflict?

DECISION: Yes, but employee may abstain from involvement to remove conflict.

This opinion is in response to your September 24, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the November 22, 2002, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Cabinet for Health Services, Division of Substance Abuse, and serve as the DUI (Driving Under the Influence) Program Coordinator. Your official responsibilities include monitoring and regulating approximately 35 certified DUI programs in the eastern region of Kentucky. One of the DUI programs that you monitor is interested in employing your brother to teach education classes in the DUI program. You ask whether this would create a conflict of interest for you due to your responsibility for monitoring and regulating the DUI program by which your brother will be employed.

KRS 11A.020(1)(a) 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;

Additionally, KRS 11A.020(3) provides:

- (3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

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The Commission believes that if you were to be involved in the monitoring and regulating of a DUI program that employs your brother an appearance of a conflict, if not an actual conflict of interest, would exist for you. However, the Commission also believes that this conflict may be remedied by your abstaining from any involvement in the monitoring and regulation of the DUI program for which your brother provides classes. Such abstention should be disclosed in writing pursuant to the provision stated above. Additionally, no one under your supervision should monitor or regulate the program that employs your brother.

Because your brother does not own an interest in the DUI program and because it does not appear you will benefit financially from your brother's employment, you are not prohibited from monitoring and regulating those DUI programs that may be in competition with the DUI program employing your brother. If your brother does own an interest and you will financially benefit from his employment, the Commission believes that, additionally, you should not monitor those DUI programs that compete with the DUI program employing your brother.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.