

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-23

May 29, 2003

RE: May a correctional institution contract with the child of the warden of the institution to provide dental services to the institution?

DECISION: No, compliance with ethics requirements would be impractical and the appearance of impropriety unavoidable.

This opinion is in response to your April 30, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 29, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. A correctional institution within the Department of Corrections is in need of the services of a dentist via a personal service contract. The child of the warden of the institution is a practicing dentist and wishes to bid on the contract. You wish to know whether such an arrangement would cause a conflict of interest for the warden. You believe an appearance of impropriety may exist.

KRS 11A.020(1)(a-d) and (3) state:

(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;

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

ADVISORY OPINION 03-23

May 29, 2003

Page Two

(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.

(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.

KRS 11A.040(3) states:

(3) A public servant shall not knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business or regulatory action with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.

The Commission assumes that the child is independent of the father. If so, the Commission believes that if neither the warden, nor anyone under his supervision, have any involvement with drawing up the specifications for the contract; and neither he, nor anyone under his supervision, have any involvement whatsoever in the selection of the vendor, or the monitoring of the contract (should his child be selected), then the potential for conflict would not exist. See Advisory Opinion 02-49. Such abstention by the warden should be documented in writing as required by KRS 11A.020(3) above.

Abstention by the warden in this matter may be unrealistic to achieve; compliance with the monitoring requirement would seem to be especially difficult. If so, the Commission recommends against this action as it would appear to be practically unworkable for the warden to comply with the requirements stated above.

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-23

May 29, 2003

Page Three

Additionally, even if these requirements are met and the statutory provisions cited above complied with, an appearance of impropriety would be impossible to avoid. The Commission has previously addressed various situations that can lead to an appearance of impropriety; for examples, see Advisory Opinions 02-10 and 02-29.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinion 02-10
Advisory Opinion 02-29