

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-32

October 16, 2003

RE: Is it a conflict of interest to have individuals who apply for grants from the Justice Cabinet also serve as peer reviewers of grant applications?

DECISION Yes, unless the applications they review are from entities with which they do not compete for grants.

This opinion is in response to your August 22, 2003, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 16, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Justice Cabinet's (the "Cabinet") Grants Management Branch (the "GMB") is responsible for federal and state grants management. Federal grants managed by the GMB include the Victims of Crime Act ("VOCA") grants, Violence Against Women Act ("VAWA") grants and Byrne grants. You state that the GMB, with a staff of eight, receives some 200 grant applications per year for the above-listed grants. In order to maximize the uses of federal funding and to efficiently review these grant applications, the GMB has established a peer review process, following accepted guidelines. A "peer" is a reviewer who is knowledgeable in the field of criminal justice, violence against women or whatever the appropriate topic.

The difficulty you have identified is that the knowledgeable individuals who are qualified to serve as peers "...are all associated with agencies either eligible for grant funding or actually receiving such. As a practical matter, it would be almost impossible to place on the review committees individuals who are not associated with agencies that are eligible to apply." You also observe that placing individuals not associated with agencies applying for grants would greatly dilute the expertise needed to understand the programs. You ask:

"In light of KRS Chapter 11A, and appearance of propriety that should be observed by the Justice Cabinet in establishing review committees, is the current grant review system appropriate?"

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By way of further explanation, you state that the Byrne Program Manager ensures that no peer reviewer reviews any application that lies within his or her purpose area. (For example a peer reviewer who heads a drug task force could review applications for drug courts or other projects in areas other than enforcement). There are 28 purpose areas in the Byrne program. It is your belief that the Byrne program is very closely patterned after the federal Bureau of Justice model, a copy of which you provided the Commission. A review of the "Bureau of Justice Assistance—Guidelines for Peer Reviewers" document showed it to include the following as a "critical concept:"

"Report any conflict, real or apparent, that could affect your ability to conduct an unbiased, objective review of an application."

The VOCA and VAWA grants are reviewed by committees selected by the GMB VAWA/VOCA Program Manager. The VOCA grants are reviewed in May of each year, the VAWA grants in October/November. You feel this review may be less strictly based on the federal model discussed above. The peer review committees for both VOCA and VAWA grants are identical, and are composed entirely of representatives of entities that are either VOCA or VAWA grant recipients. However, you emphasize that no peer reviewer reviews his own agency's grant application, and that the committee review is mainly used by GMB staff to compile additional information about the grant application agencies and to send out letters to the agencies if the applications are deficient, or if more information is required.

For both Byrne program grants and VOCA/VAWA grants, the peer review process does not result in final decisions; discretion for final decisions in the award of grant monies rests with the Director of the Criminal Justice Council and the Cabinet Secretary.

KRS 11A.005, in the Executive Branch Code of Ethics (the "Code") states:

- (1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:
 - (a) A public servant be independent and impartial;
 - (b) Government policy and decisions be made through the established processes of government;
 - (c) A public servant not use public office to obtain private benefits; and
 - (d) The public has confidence in the integrity of its government and public servants.

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(2) The principles of ethical behavior for public servants shall recognize that:

(a) Those who hold positions of public trust, and members of their families, also have certain business and financial interests;

(b) Those in government service are often involved in policy decisions that pose a potential conflict with some personal financial interest; and

(c) Standards of ethical conduct for the executive branch of state government are needed to determine those conflicts of interest which are substantial and material or which, by the nature of the conflict of interest, tend to bring public servants into disrepute.

In Advisory Opinion 02-10, the Commission held that a state employee who was involved in review of a program that was in competition for grant monies with a business with which he had a private interest did create a conflict of interest for the employee. The Commission required that the employee abstain from any involvement in review of the competing program in order to “cure” the conflict, and that if he wished to avoid even the appearance of a conflict, the employee should remove himself from the private business’s grant application.

Additionally, in Advisory Opinion 03-14 (a copy of which is enclosed), the Commission advised a state board whose members are not subject to the Executive Branch Code of Ethics to adopt an internal policy that would require board members who may have a personal interest in a grant to abstain from any board involvement in discussions or review of the grant.

In this case, it appears that, although many of the individuals who serve as peer reviewers are not state employees subject to the code of ethics, you recognize that potential conflicts of interest exist for peer reviewers who review grant applications of entities seeking grant monies from the same “grant award” from which entities with which the reviewers are associated are seeking grant monies. The Commission believes that if the Justice Cabinet wishes to avoid any actual or perceived conflicts in the grant award process, the advice in the advisory opinions noted above should be followed.

Specifically, no peer reviewer should review an application for grant monies submitted by his own agency/entity or review grant applications for which his agency/entity has expressed support. Likewise, no peer reviewer should review grant applications that are competing for the same “pot” of grant monies as a grant application submitted by the peer reviewer’s

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agency/entity. If there are different “pots” of money for different service regions or by purpose area, then the peer reviewer could in fact review grant applications for those different regions or purpose areas without any potential for conflict.

Peer reviewers, who are also executive branch employees, acting as reviewers as part of their official positions would also be subject to the advice given above.

In response to your request, in light of KRS Chapter 11A, and the appearance of impropriety, the Commission believes the current review system is appropriate only if the reviewer is not asked to review a grant application from his own agency or from an agency with which the peer reviewer’s agency may compete for the same grant funds.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 03-14