

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 04-10

April 8, 2004

- RE: 1) May a public servant refer clients, with which he has contacts as a part of his official position, to his or his family's business?
- 2) May a public servant enjoy part of a contract between his state agency and another individual?

- DECISION: 1) No.
- 2) No.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own motion. The matter was reviewed at the April 8, 2004, meeting of the Commission and the following opinion is issued.

The Commission has become aware of allegations regarding Transportation Cabinet employees that involve potential violations of the Executive Branch Code of Ethics. The Commission wishes to provide guidance on these matters for the Cabinet and its employees.

Specifically, the Commission will address issues involving employees' referral of clients to their private businesses and negotiation of agreements with such clients, as well as employees enjoying the financial benefit of a contract or an agreement with their own state agency.

KRS 11A.020(1) provides:

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

(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;

(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.

In Advisory Opinion 98-35, the Commission advised a park manager that he should not refer customers to private rental property that he or his spouse owns. Similarly, the Commission believes that an employee of the Transportation Cabinet should not refer clients to, or negotiate agreements with, clients for his or his family's private business (i.e. recycling, permitting, etc.) if the contact with clients for the referral occurs during the conduct of official business for the Transportation Cabinet by the employee.

Furthermore, if the Transportation Cabinet has regulatory authority over the clients that the employee is seeking to do business with, and if the employee is involved in any regulatory matters involving such potential clients as a part of his official position, then a conflict of interest would exist if he were to seek such clients. Such action may damage the public's confidence in the independence and impartiality of public servants and the government of the Commonwealth.

KRS 11A.040(4) provides, in pertinent part:

4) A public servant shall not knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340.

The Commission also advises employees of the Transportation Cabinet not to have agreements with persons or businesses to provide a service that will fulfill a part of a contract or agreement with the Transportation Cabinet. For example, if an individual has an agreement (written or verbal) with the Transportation Cabinet to deliver license plates to county clerks, an employee may not be compensated by the individual to fulfill the service of delivering the license plates. Such action would violate the provisions stated above in that the employee would be "enjoying" a part of an agreement with his own state agency, the Transportation Cabinet.

The Commission recommends that Transportation Cabinet management take steps to ensure future compliance with the law by its employees in their official actions.

BY CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 98-35