

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 04-24

May 27, 2004

RE May an officer or director of a professional organization serve as a board member for the state licensure agency that regulates the same profession?

DECISION: Yes, however an appearance of a conflict may be unavoidable.

This opinion is issued in response to your May 14, 2004 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 27, 2004 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Kentucky Board of Auctioneers (the "Board") licenses and regulates auctioneers, apprentice auctioneers, auction house operators, livestock auctioneers, and tobacco auctioneers in the Commonwealth of Kentucky, pursuant to KRS 330. According to KRS 330.050, the Governor appoints the members to the Kentucky Board of Auctioneers. Four members are auctioneers who have been in the profession at least five years. One member is a citizen at large or consumer member.

Upon a vacancy on the board, the Kentucky Auctioneer Association, a private professional group of auctioneers, recommends to the Governor at least three names from which the Governor selects the member to be appointed to the Board. You ask whether an officer or director of the private professional group may serve as a board member on a licensure board that regulates the same professional group.

KRS 11A.010(9) defines "public servant" as:

- (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;
- (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;

KRS 11A.010(7) provides:

(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;

As provided in previous advisory opinions, members of state boards and commissions, unless specifically listed as officers in KRS 11A.010(7) above, are not considered to be public servants subject to the Executive Branch Code of Ethics. Consequently, because members of the Board are not subject to the code of ethics in KRS Chapter 11A, any potential conflicts of interest for members are not under the jurisdiction of the Commission, and thus service by such individuals would not be prohibited under the ethics code.

The Commission believes, however, the mere fact that auctioneers serve on the Board (whether involved in the private professional group or not) presents an inherent conflict for those members, that is unavoidable due to statutory requirements.

Furthermore, an officer's or director's prominent role in a private professional group that primarily represents auctioneers interests creates a perception that the auctioneer's interests may outweigh the Board interests in his service on the Board. Thus, the Commission advises that if

the Board wishes to uphold the public trust in the neutrality of its enforcement procedures, its members not serve in prominent roles in private professional organizations that represent auctioneers.

Also, the Commission urges the Board to take the initiative by adopting, at a minimum, a [Code of Ethics](#). As provided in this model code, board members should disclose any individual conflicts of interest and abstain from voting on those matters that would affect them in a manner differently from other members of the profession.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 02-52
Model Code of Ethics