

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 05-36**

September 2, 2005

RE: Does employee's service as an officer of the Kentucky Waterway Alliance create a conflict of interest with employment for the Division of Mine Permits?

DECISION: Yes.

This opinion is issued in response to your July 7, 2005, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 2, 2005, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. An employee of the Division of Mine Permits within the Department of Natural Resources, Environmental and Public Protection Cabinet, is responsible for reviewing applications for surface and deep coal mines throughout the state. While the employee does not make final determinations on permit applications, he does make recommendations for issuance or denial of permits. During his off-duty hours, the employee also serves as Treasurer of the Kentucky Waterways Alliance ("KWA"), whose stated mission is "to protect and restore Kentucky's waterways and their watersheds by building effective alliances for their stewardship" through strengthening community and governmental stewardship. As Treasurer of KWA, the employee oversees KWA's financial affairs, conducts annual review of financial records, submits financial reports of income and disbursements to the Governing Council, and chairs the Personnel Committee. The employee is not responsible for making final decisions on behalf of KWA.

The issue of a potential conflict of interest for the employee has been raised by an individual who states that KWA is in litigation against the Environmental Protection Agency, that the coal industry is a direct target in the litigation, and that the employee's involvement in KWA poses a conflict with his role in state government. You ask, based on the facts provided, whether a conflict of interest exists for this employee.

According to KRS 11A.020:

- (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.

Furthermore, KRS 11A.005(1) states that:

- (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.

A similar situation was reviewed by the Commission in Advisory Opinion 98-20. In that opinion, a merit system employee, whose job responsibilities included reviewing and making recommendations concerning hearings conducted in unemployment insurance benefit cases between employers and employees, was invited to serve on the board of a private union affiliated organization whose mission was to identify and attempt to solve common needs of employees.

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In that case, since the organization in which the employee was to become involved promoted the interests of "labor" (i.e. the employees), while his official position required him to make recommendations in disputes between labor and management, the Commission found that service on the private organization would present the appearance of a, if not an actual, conflict of interest with the employee's official duties. The Commission therefore advised that the employee, in the interest of appearance of strict neutrality, should not serve on the board of the private organization. See also Advisory Opinion 93-38.

Thus, the Commission believes that if KWA involves itself in litigation that can be said to be contrary to the interests of the coal industry then the employee's service as an officer or voting member of the Advisory Council of the KWA may create a conflict with the employee's job responsibilities of reviewing applications for surface and deep coal mines that are filed with the Division of Mine Permits by members of the coal industry.

Service on the board of an organization that involves itself in litigation viewed as contrary to the interests of the coal industry, while being in a position to review and make recommendations regarding the issuance of mining permits to members of that same industry, presents at the very least an appearance of a conflict of interest, which is contrary to the spirit of KRS 11A.005, above. Furthermore, the potential exists for a violation of KRS 11A.020 to occur, should it be found that the employee is using his official position in any way to further the interests of KWA.

Sincerely

**EXECUTIVE BRANCH ETHICS COMMISSION**

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BY CHAIR: John A. Webb

Enclosures: Advisory Opinion 98-20  
Advisory Opinion 93-38