

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 05-42

December 16, 2005

RE: May agency purchase products from local store owned by employee's spouse?

DECISION: No.

This opinion is issued in response to your November 22, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 16, 2005 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The administration at the Morehead Youth Development Center (Morehead YDC) within the Department of Juvenile Justice recently decided to replace the carpet and furniture in several of their offices. As such, the Fiscal Officer at the Morehead YDC requested the Maintenance Superintendent to contact two or three local businesses for price quotes on carpeting for the fiscal business office. The only quote received by the Fiscal Officer was from a local carpet store owned by the spouse of a Youth Worker Supervisor employed by the Morehead YDC. Since the quote for the carpet was within the small purchase limit, the Fiscal Officer contacted the local carpet store to install the carpet.

The Fiscal Officer subsequently purchased several pieces of furniture also from the local carpet store since the price for the furniture was less than furniture prices in office catalogs and was within the small purchase limit. Additional carpeting was also secured from the local carpet store for several more of the offices at the Morehead YDC being renovated. You ask whether such purchases by the Morehead YDC are allowable in the event that you need to make a similar purchase in the future.

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 05-42

December 16, 2005

Page Two

KRS 11A.020(1)(d) provides:

(1) No public servant, by himself or through others, shall knowingly:

...

(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.

Further, KRS 11A.040(4) provides:

(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. This provision shall not apply to:

(a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or

(b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or

(c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or

(d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction.

Please find enclosed Advisory Opinions 92-4, 93-72 and 94-25 that provide guidance in this matter. As stated, the Commission believes that an employee will benefit from a spouse's business. Thus, pursuant to KRS 11A.040(4) above, an employee is prohibited through a business of his or her spouse to knowingly having a contract or an agreement with the state agency for which the employee works. Thus, the Commission advises the Morehead YDC, or

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 05-42
December 16, 2005
Page Three

any agency within the Department of Juvenile Justice, to refrain from purchasing products from the local carpet store due to the fact that it may cause the Youth Worker Supervisor, or other employees involved in making the purchase decision, to commit a possible violation of the Executive Branch Code of Ethics.

The Commission also points out, however, that if the agency purchases a product from a company that is owned by an employee's spouse (the fact of which the agency is unaware) and the employee is unaware of the agreement or purchase, then the Commission does not believe that a violation by the employee has occurred, since the employee did not "knowingly" benefit from the transaction. However, if the employee is aware of the agency's intention to purchase a product or service from a local store owned by the employee's spouse, or if employees making the purchase decision are aware of the employee's relationship to the local store, then a possible violation may exist if an agreement occurs.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb

Enclosures: Advisory Opinion 92-4
Advisory Opinion 93-72
Advisory Opinion 94-25