

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 06-13

June 16, 2006

RE: May conflict be avoided by abstaining from inspection of potential employee's formerly owned mine?

DECISION: Yes, within limitations.

This opinion is issued in response to your April 24, 2006 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 16, 2006 meeting of the Commission and the following opinion is issued.

You provide the following relevant facts as follows. You are the director of the Division of Safety Inspection and Licensing, with the Office of Mine Safety and Licensing, Department of Natural Resources, Environmental and Public Protection Cabinet. You are in the process of interviewing candidates for a mine inspector position at one of your district offices. One individual who interviewed for the position previously was a coal operator, but has sold his mining operations. However, the candidate still receives monthly payments for the purchase of the mine he once owned. If you hire the individual, you ask whether a conflict of interest could be avoided by not allowing the individual to inspect the mine he formerly owned.

KRS 11A.0202(1)-(3) provides:

- (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.

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

In similar situations which the Commission has addressed in the enclosed advisory opinions, employees were advised, as part of their official duties, to abstain for a reasonable period of time from any involvement with their former companies or employers, in order to avoid potential conflicts of interest. Further, if an employee is receiving compensation from a company, he should refrain from involvement in decisions or recommendations concerning the company from which he is receiving payments, as well as from businesses that may compete with the company from which he is receiving compensation.

In this case, since the potential employee is receiving periodic payments from the mine's new owners, if hired he should abstain from any inspections of the mine he formerly owned and any mines that directly compete with that mine until such payments cease. Further, any employees under his supervision should not be involved in any inspections of the mine from whose owners the potential employee is receiving payments. He also should abstain from any discussions with other mine inspectors concerning matters of the mine he formerly owned. A potential appearance of impropriety will exist for the employee until all payments cease.

Once the payments cease, based on the enclosed advisory opinions, and assuming the potential employee no longer has any mine ownership, the employee can avoid any potential conflicts provided he further abstains for a reasonable period of time from inspections of his former mine.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb

Enclosures: Advisory Opinion 98-19
Advisory Opinion 98-31
Advisory Opinion 01-8
Advisory Opinion 01-15
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