

Executive Branch Ethics Commission
ADVISORY OPINION 07-36
October 19, 2007

Amends Advisory Opinion 07-25

RE: May PVA field representative work privately as an appraiser in his own county?

DECISION: Yes, if data collected as a part of official duty is not used for PVA appraisal of a property on which he performs a private appraisal; however an appearance of a conflict may still exist.

This opinion is issued in response to your September 7 and 30, 2007 requests for a reconsideration of Advisory Opinion 07-25 issued by the Executive Branch Ethics Commission (the "Commission") on August 24, 2007. This matter was reconsidered at the October 19, 2007 meeting of the Commission and the following opinion is issued.

After receiving Advisory Opinion 07-25 and some further clarification on the opinion, you provide the following additional information regarding this matter to the Commission. As a Property Valuation Administrator ("PVA") field representative (now entitled "field assessor") you photograph, measure and sketch new houses, and never go inside a house except during initial construction of new homes. For existing homes, you look at aerial photography (on the computer) to see if existing sketches are correct (i.e. whether there have been any additions or deletions to the property not recorded). If necessary, you visit the property to clarify what was seen on the aerial photography. All observations are made from the exterior of the home.

There are over 240,000 residential properties in your county of employ and there are only six authorized field representative positions to inspect the properties. The field representatives do not select which properties they wish to inspect, but rather the area and properties to be "inspected" by each PVA field representative are assigned by the PVA.

You believe that a conflict of interest would only exist if the field representative/appraiser was to be assigned to inspect a home, and at the same time, he was hired by a private appraisal client to perform an appraisal on the same piece of property. You state the odds of that happening are astronomical. Current PVA policies dictate that the only homes visited by field representatives are those in his or her assigned area for which permits are issued (new construction, additions, etc.) or if there are discrepancies on aerial photography which

cannot be resolved without a personal visit. Thus, the number of homes a field representative actually visits and measures is a very small percentage of the dwellings in the county.

Further, all information/data gathered by the PVA field representatives is public information, readily available to anyone who requests it, and also readily available on the internet. By working for a PVA, a private appraiser does not gain an advantage because the data is easily and quickly obtainable by anyone who wants it. In the very rare instance of a potential conflict of interest, you believe an "honest" field representative would either turn down an appraisal assignment, or return to the property on off-duty time to re-measure the property and perform a full inspection for private appraisal purposes.

You ask for a reconsideration of Advisory Opinion 07-25 based on the additional information you have provided.

You are correct in stating that an actual conflict of interest will exist only if you are involved as part of your official duty in providing measurements and data regarding a certain property and also are hired privately to perform an appraisal on the said property. The Commission agrees that if you abstain from any involvement as part of your official duty as a field representative in inspecting properties which you have appraised or assessed as part of your private business, and you agree to not appraise or assess any properties which you have inspected as part of your official duty for the PVA, it will serve to avoid any conflicts between your private interest and your duty in the public interest as a PVA field representative. Such abstention from involvement should be documented in writing pursuant to KRS 11A.020(3) below:

- (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.

Further, the Commission reiterates its opinion that just the fact that you are an employee of your county PVA office may give the appearance to the public that you are using your official position to give yourself an advantage in your private business (even though that may not be the case). The Commission also believes that neither the Department of Revenue, nor a local PVA office, is prohibited from implementing in-house policies regarding approval of its employees' outside employment that may be more restrictive than the Executive Branch Code of Ethics in order to avoid even an appearance of a conflict of interest for a PVA office.

Based on its conclusions above, the Commission amends Advisory Opinion 07-25.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: John A. Webb