

Executive Branch Ethics Commission

ADVISORY OPINION 07-44

December 14, 2007

RE: Does individual's acceptance as the position of communications director for the Office of the Governor present a conflict?

DECISION: No, provided he abstains as part of his official duties from matters involving his private firm and the firm's clients.

This opinion is issued in response to your December 5, 2007 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 14, 2007 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. An individual has been offered a non-merit position as the head of the Governor's communication team within the Office of the Governor. Currently, the individual is the sole shareholder of a public relations firm from which he plans to take a leave of absence and draw no compensation, bonus or dividends from the business. The firm has approximately 14 employees, one of whom is the potential employee's spouse. Although the firm has no contracts with the Commonwealth of Kentucky, it does represent clients who may do business with or may be regulated by the state, such as a convention and visitors bureau that receives state matching funds from the Department of Tourism within the Commerce Cabinet.

In addition, the individual offered the position is a board member of the Kentucky Equine and Tourism Foundation, a client of the firm, but will be resigning from that board upon acceptance of employment with the Commonwealth. Assuming the individual receives no compensation from the firm and abstains from matter involving the firm, and for a reasonable period of time abstains from matters involving the Equine and Tourism Foundation, you ask whether his acceptance of the position as communications director for the Office of the Governor will create any conflicts for him under KRS Chapter 11A. You also inquire as to whether his spouse's continued employment with his firm presents any conflicts.

KRS 11A.020(1) through (3) provides:

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

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- (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.

The Commission assumes that the position of head of the communications team for the Office of the Governor entails coordination of communication strategies across state government. Such a position may involve working with other agencies in addition to the Office of the Governor.

Even if the potential employee for the position of communications director plans to receive no compensation from the firm, because he still retains full ownership of the firm and thus a financial interest, a potential for conflict between his private interests and his duties in the public interest could exist. Although the firm is not directly doing business with, regulated by, or seeking grants or funding from state agencies, because it has clients that may, a potential conflict exists for the potential employee to be involved as part of his official duty in any matters that may affect the clients of his firm. The firm benefits financially from contracts with its clients, which may cease if the clients are not successful.

The Commission believes the potential employee should have no involvement (discussions, decisions, actions and recommendations) as part of his official duty in any matters pertaining to his firm, any clients of his firm, or any firms that compete with his firm. Such involvement could present a significant conflict between his private interest for his firm and his duties in the public interest for the Commonwealth. Furthermore, in order to avoid any conflicts he should not supervise any employees who are directly involved in matters pertaining to his firm or any of the private clients of his firms, such as decisions to award funds or the awarding of contracts. Such abstentions should be disclosed in writing pursuant to KRS 11A.020(2) quoted above.

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Moreover, the individual offered the position should have no discussions with, or make decisions or recommendations to other agencies, including but not limited to the Department of Tourism, or the Governor concerning matters pertaining to any of the clients of his private firm. He should not attempt to use his influence to give an advantage to clients of his firm.

The Commission notes that by terminating his board membership with the Kentucky Equine and Tourism Foundation the potential employee should no longer have an actual conflict if he were to be involved in matters regarding this Foundation. However, due to the employee's former relationship with the Foundation, an appearance of a conflict may exist if he immediately becomes involved in matters concerning the Foundation upon his state employment. Thus, the Commission advises the potential employee, as you have proposed, to refrain from involvement with the Kentucky Equine and Education Foundation for a reasonable period of time as determined by the Office of the Governor. Further, as long as the Foundation is also a client of the firm, the employee should apply the guidance in the proceeding paragraphs as well.

Compliance with the above guidance will serve to eliminate any actual or perceived conflicts of interest that may occur for the potential employee. The guidance above also will serve to avoid any conflict for the potential employee that may exist due to his spouse's continued employment for the firm.

Also, if the firm the potential employee owns ceases to have as clients any businesses that do business with, are regulated by, or receive matching funds from agencies, then the Commission believes that no potential for conflict will exist. See also enclosed Advisory Opinions 98-19, 98-31, 00-20, 04-20 and 06-13.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Vice Chair: E. Patrick Moores

Enclosures: Advisory Opinion 98-19
Advisory Opinion 98-31
Advisory Opinion 00-20
Advisory Opinion 04-20
Advisory Opinion 06-13