

Executive Branch Ethics Commission
ADVISORY OPINION 08-7
May 9, 2008

RE: May Department of Revenue employees serve as ex-officio members of Kentucky Farm Bureau Tax Advisory Committee?

DECISION: Yes, as long as non-compensated and non-voting.

This opinion is issued in response to your March 4, 2008 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 9, 2008 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. The Commissioner of the Department of Revenue, an agency within the Finance and Administration Cabinet (the "Department"), and two directors employed by the Department, have been requested by the president of Kentucky Farm Bureau Federation (the "Federation") to serve as ex-officio members of Kentucky Farm Bureau's Tax Advisory Committee (the "Committee") for 2008. As developers and implementers of the Commonwealth's tax policy, they have been asked to assist the Committee with general tax policy and compliance issues. The Department believes that employee participation on the Committee will help the Department disseminate its policies and interpretations which will help corporate and individual Kentuckians with their own tax issues due to the wide alliance in the Commonwealth served by the Federation.

You state that from an administrative perspective, the Department is the principle policy making and tax collection agency in the Commonwealth. The Department collects a variety of taxes including ad valorem, income, sales and use, corporate, and other miscellaneous ones. It collects and will continue to collect taxes of some type from Federation members. Decisions that the Department has made and will make affect the members of the Federation as well as all Kentuckians.

The role that the Department employees will have on the Committee will be strictly advisory as part of their official duties for the Cabinet. They will not possess any formal or vote-casting role, but will merely be lending their expertise similar to other Department personnel who serve on other tax-related entities throughout the Commonwealth. They will not receive any compensation for their time spent serving on the Committee.

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You ask for an advisory opinion from the Commission on whether their service on the Committee would be contrary to the conflict provisions of KRS Chapter 11A. You further ask, if the Commission finds their service on the Committee creates a conflict, do mitigating measures exist, such as recusal or abstention, that would allow them to serve on the Committee?

According to its website, Farm Bureau is a voluntary organization of farm families and their allies dedicated to serving as the voice of agriculture by identifying problems, developing solutions and taking actions which will improve net farm income, achieve better economic opportunities and enhance the quality of life for all. It also serves as an advocate for its members with legislative priorities, some which are related to taxation.

KRS 11A.005(1)(a) provides:

(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;

KRS 11A.020(1)(a) 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;

In answering this question, the Commission reviewed the provisions above along with several previously issued advisory opinions (copies of which are enclosed). Advisory Opinion 93-38, issued to the Commissioner of Mines and Minerals regarding his service on non-profit mining organizations provided that in the interest of strict neutrality in enforcement activities, the Commissioner should not be a voting member of the board of directors of such organizations dominated by coal-industry operators. However, the Commissioner was advised he could serve as a non-voting, ex-officio member of a mining institute.

Similarly, the Commission believes because the Federation's mission includes promoting the interests of farmers through advocacy for its members regarding taxation policies, the Department employees should not be voting members of the Committee, but rather may serve as non-voting, ex-officio members in an advisory capacity only, as they have been requested to do.

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If the mission of the Department will be enhanced by the involvement of the employees on such a committee, and the employees will be representing the Department by such service, then such limited employee involvement does not appear to create a conflict for the employees in the conduct of their official duties. However, such employees should not serve as officers or lobbyists for the organization even in an ex-officio capacity. Furthermore, since the employees' service on the Committee will be part of their official duties for the Department, they are prohibited, pursuant to KRS 11A.040(5) provided below, from accepting additional compensation for such service, as you have indicated they will not.

KRS 11A.040(5) provides:

A public servant shall not knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: John A. Webb

Enclosures: Advisory Opinion 93-38
Advisory Opinion 98-20
Advisory Opinion 02-18
Advisory Opinion 02-41