

Executive Branch Ethics Commission  
**ADVISORY OPINION 08-8**  
May 9, 2008

**RE:** Does employee's volunteer activity present a conflict?

**DECISION:** No.

This opinion is issued in response to your March 24, 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 state the relevant facts as follows. An individual within the coal mining industry, which is regulated by the Department for Natural Resources ("DNR"), Environmental and Public Protection Cabinet, has raised an issue about the appropriateness of outside volunteer work performed by one of that agency's full-time employees. The employee in question works in the Division of Mine Permits ("DMP") within DNR as an Environmental Control Supervisor overseeing a section of five permit reviewers and engineers involved directly in the review of coal mine permit applications. While this employee does not make the final determination on permit applications, his work and the work of those he supervises have a direct influence on DMP permitting decisions. You indicate that the employee in question is the same individual that was involved in the matter considered by the Commission in Advisory Opinion 05-36, and you believe that opinion somewhat parallels the current issue.

The employee serves as the "northeast coordinator" for the Salt River Watershed Watch ("SRWW"), an organization sponsored by the Kentucky Division of Water, the Sierra Club, and the Kentucky Waterways Alliance ("KWA"). According to its website, the SRWW is primarily a "synoptic sampling" program that samples streams across the Salt River Basin three times a year. Each time the volunteers measure pH, dissolved oxygen, temperature, and conductivity and record information about recent rainfall and stream flow. Once a year the volunteers assess biological diversity and habitat quality and record information about the physical condition of the stream. KWA administers funds SRWW receives from grants from the Virginia Environmental Endowment, Louisville, and the Jefferson County Metropolitan Sewer District. The statewide Watershed Watch is run by an eleven-member steering committee, one of which is KWA. There is no coal mining within the SRWW area.

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The employee's duties as an unpaid, unreimbursed, volunteer for SRWW are to sample the Little Kentucky River three times a year for water quality monitoring purposes, to pickup similar samples from other volunteers, and to deliver these samples to a laboratory or the biology department at the University of Louisville. You ask whether these activities present a conflict of interest for your employee.

According to KRS 11A.020:

- (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.

Furthermore, KRS 11A.005(1) states that:

- (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;
  - (b) Government policy and decisions be made through the established processes of government;
  - (c) A public servant not use public office to obtain private benefits; and
  - (d) The public has confidence in the integrity of its government and public servants.

In Advisory Opinion 05-36, the Commission determined a conflict of interest existed for the employee to remain an officer for KWA because DMP regulated the coal industry, and KWA involved itself in litigation that could be said to be contrary to the interests of the coal industry. In this current matter, KWA's role in SRWW is rather limited. While SRWW is part of a state organization that in turn is part of a joint sponsorship program that includes KWA, as well as a division of the agency, and a number of other private and governmental organizations, and while KWA administers grant funding received by SRWW, KWA does not control the use of those funds.

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Further, the SRWW does not appear to promote interests contrary to the interests of the coal industry (or the other departments of DNR), which DMP regulates, but rather promotes the interests of the agency. The Commission also notes the employee's role as a volunteer for SRWW is limited to merely collecting and delivering water samples three times a year. Most importantly, however, is the fact that there is no coal industry within the watershed area, so there is no direct crossover between the employee's state position or job duties and the coal industry. Based on the information provided to the Commission, the employee's involvement as a volunteer does not appear to create a conflict of interest with the employee's job responsibility of overseeing permit reviewers and engineers involved with the direct review of coal permit applications, nor does it appear to give any appearance of a conflict.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Chair: John A. Webb

Enclosures: Advisory Opinion 05-36