

Executive Branch Ethics Commission
ADVISORY OPINION 09-22
September 18, 2009

RE: Is it a conflict of interest for the Director of Biofuels to accept an outside consulting agreement with an out-of-state bank to assist in the sale of idle biofuel manufacturing assets?

DECISION: No.

This opinion is issued in response to your August 5, 2009 request for an advisory opinion from the Executive Branch Ethics Commission (the “Commission”). The matter was reviewed by the Commission on September 18, 2009 and the following opinion is issued.

You are the Director of Biofuels for the Department of Energy Development and Independence within the Energy and Environment Cabinet. Your responsibility is biofuels development within Kentucky and oversight of approximately \$2.2 million of renewable energy research, development and commercialization grants from your department, all of which are held by public universities.

You are seeking approval to enter into an “off-hours” consulting agreement with an out-of-state bank to assist in the sale of idle manufacturing assets relating to the biofuels industry that were repossessed from your previous employer. You will receive hourly compensation and expenses as well as a significant bonus upon sale. You state that there is a remote possibility that the sale could be made to companies that share common investors with companies you are recruiting for location in Kentucky. Your role in biofuels development for Kentucky is as a facilitator whereby you draw upon your many years of contacts from having spent 30 years in the grain processing and biofuels industries. While you have no means of committing the Commonwealth’s funds, you do make recommendations to those agencies that manage funds, and refer your leads and contacts to them. As an example, you state that one of your contacts that you referred to the Cabinet for Economic Development (“CED”) is an investor in a company planning a large manufacturing facility in the United States. CED subsequently made significant offers of funds and benefits to the company if it chose a Kentucky location. You have since advised us that this did not occur. There is, however, the possibility that you will attempt to sell the Texas property to the same investor, though through a different subsidiary company. You indicate that you in fact had significant discussions with this investor about the purchase of the Texas property prior to your employment with the Commonwealth of Kentucky, although you

only found out through one of those discussions that another company in which this contact was an investor might be interested in locating a separate facility in Kentucky.

In a subsequent conversation, you clarified that this is a one time opportunity for you in which you have a vested interest, and that you have no intention of doing any outside consulting work other than relating to the sale of these assets. You also clarified that the assets in question are specific to the cotton industry of West Texas and that there would be no competing interests involved. That is, the West Texas assets are not something that a company would consider locating in Kentucky, so there is no likelihood that your interest in selling the West Texas assets would compete with your job duties for the Commonwealth, which is to bring biofuel development to Kentucky.

KRS 11A.005 states as follows:

(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.

(2) The principles of ethical behavior for public servants shall recognize that:

(a) Those who hold positions of public trust, and members of their families, also have certain business and financial interests;

(b) Those in government service are often involved in policy decisions that pose a potential conflict with some personal financial interest; and

(c) Standards of ethical conduct for the executive branch of state government are needed to determine those conflicts of interest which are substantial and material or which, by the nature of the conflict of interest, tend to bring public servants into disrepute.

KRS 11A.020 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.

...

- (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.

Based on the information provided, the Commission does not believe that your proposed consulting agreement with the out-of-state bank for the purpose of selling the assets in West Texas would create a conflict of interest for you. The uniqueness of the assets in question and the limited scope of your proposed consulting work serve to reduce the likelihood that a conflict could arise. Obviously you should not use your official position or state resources in the furtherance of your consulting agreement, nor perform any of your services on state time. While the Commission recognizes that your primary role as Director of Biofuels is as a facilitator to help bring potential biofuel investors to Kentucky by connecting them with the proper individuals at CED, if the unlikely situation should arise where a potential investor is interested in either the West Texas assets or locating in Kentucky, or if any other direct connection between the purchase of the West Texas assets and an investor locating in Kentucky arises, then you should abstain from any further involvement with the investor in your official capacity due to your private interest in the matter. If this situation should arise, you should disclose the fact in writing to your superior who shall in turn, pursuant to KRS 11A.020(3), cause decisions on these matters to be made by an impartial third party.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Gwen R. Pinson

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