

Executive Branch Ethics Commission  
**ADVISORY OPINION 10-04**  
September 27, 2010

**RE:** May a deputy Property Valuation Administrator co-own a real estate brokerage business with a partner who conducts business in the county in which the deputy PVA is employed?

**DECISION:** Only if the deputy Property Valuation Administrator does not financially benefit from the partner conducting business in that county.

This advisory opinion is issued in response to your July 30, 2010 request for an opinion regarding whether a deputy property valuation administrator may co-own a real estate brokerage business in a different county with a partner who conducts business in the county in which the deputy PVA is employed. This matter was reviewed at the September 27, 2010 meeting of the Executive Branch Ethics Commission (the "Commission") and the following opinion is issued.

KRS 11A.005 states:

(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(1) 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.

As previously discussed in Advisory Opinions 98-11 and 05-22, it would be a conflict of interest for a PVA, or an employee of a PVA office who is involved in valuing property, to market property in his home county, either personally or through sales associates, as part of his private business through which he would receive a financial gain based on the value or selling price of the property. The Commission reiterated this position in Advisory Opinion 09-14: "The Commission still believes that the PVA and deputy PVAs should not be involved in the buying and selling of property as a business practice in the county in which they are employed . . . ." As stated in Advisory Opinion 05-22, this does not prohibit a PVA or employee of a PVA office from listing and selling real estate in other counties, assuming these individuals take care not to use their official position in any way that would give them, or their sales associates, an advantage, or conduct any real estate business on state time or using state property.

Similarly, in Advisory Opinion 06-29, the Commission concluded that while a PVA is prohibited from performing real estate appraisals or serving as a sales broker for sales associates in the county in which he is a PVA, this prohibition would not apply to his spouse, provided that a clear separation is made between the spouse's work and the office of the PVA. In that opinion, the Commission went on to say that the PVA should not use his position in the assessment of property or in any other way to give a financial gain or advantage to the spouse in real estate matters. The spouse could not have access to any PVA records or information not readily available to the general public, and the spouse could not provide any information to the PVA regarding potential property listings or sales lest the PVA's independence in judgment regarding property assessment be affected.

The situation you present to the Commission is similar to the question regarding the spouse in Advisory Opinion 06-29. While the Commission does not have the authority to say it would be impermissible for a deputy PVA's partner to conduct business in his home county, it is the Commission's opinion that it would be impermissible for the deputy PVA to receive a financial gain, either directly or through his interest in the brokerage business, from the sale of such properties by his partner. This situation would be little different than a PVA or employee of a PVA office directly conducting business in his home county. However, if the deputy PVA's arrangement with his partner does not provide for him to financially benefit in any way from his partner conducting business in his home county, then the deputy PVA could co-own the business, assuming he does not use his official position in any way to assist his partner in conducting business or in any other way to give a financial gain or advantage to his partner. The deputy PVA's partner could not have access to any PVA records or information not readily available to the general public, nor should the partner provide any information to the deputy PVA regarding potential property listings or sales lest the deputy PVA's independence in judgment regarding property assessment be affected.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

---

By Acting Chair: Ron Green

This document was created with Win2PDF available at <http://www.win2pdf.com>.  
The unregistered version of Win2PDF is for evaluation or non-commercial use only.  
This page will not be added after purchasing Win2PDF.