

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 92-1

September 28, 1992

RE: Child Care Advisory Committee/CCDBG

In response to your August 19, 1992 request, the Executive Branch Ethics Commission (the "Commission") hereby issues the following advisory opinion in regards to the award of contracts to some members of the Cabinet's Child Care Advisory Committee (the "Committee"), which such contracts are financed by funds from the Child Care Development Block Grant.

The relevant facts pertaining to your request are as follows. The Committee was established by Administrative Order 91-41 essentially to advise Cabinet officials on child care issues. The Committee members are not compensated, but are reimbursed for their expenses. Most significantly, while we understand that the Committee reviews the State Plan which identifies and prioritizes the types of contracts to be solicited, Committee members have no direct involvement in the awarding of the contracts at issue.

Based on these facts, the Commission is of the opinion that Committee members, who are merely non-compensated members of a purely advisory body, do not fit Senate Bill 63's definition of "public servant" or "officer." Accordingly, they are not covered by the ethics law generally or by its specific prohibition against holding contracts awarded by a state agency. Section 6(4). (Note that even this prohibition excepts contracts "which may directly or indirectly involve public funds disbursed through entitlement programs," such as development block grants.)

Nevertheless, the Commission takes this opportunity to express its unease with the Committee members' review of the State Plan as it relates to the identification and prioritization of contracts to be solicited. If any Committee member thereby gains an unfair advantage in the bidding/awarding of such contracts, the Commission would urge the Cabinet's Department of Law to take appropriate administrative steps to stop any such activity. The Commission is of the opinion that Child Care Advisory Committee members who hope to receive future contracts should abstain from review and recommendations concerning that part of the State Plan which identifies and sets priorities for such contracts. The Commission recommends that the availability of such contracts be widely publicized among potential applicants. Please also keep the Commission informed of any complaints received in the future about this entire situation. Thank you.