

EXECUTIVE BRANCH ETHICS COMMISSION  
ADVISORY OPINION 93 – 9

April 2, 1993

RE: Cabinet employee (employed by MOA arrangement with University) asks whether he may speak on behalf of University in a matter before the Cabinet

This letter is in response to your March 9, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"), which was received on March 15. This matter was reviewed at the April 2, 1993, meeting of the Executive Branch Ethics Commission and the following opinion is issued.

The relevant facts are as follows: You currently maintain a dual employment relationship with a state agency ("Agency") and a state university (the "University"). There is a Memorandum of Agreement in place outlining the arrangement between the Agency and the University, with the Agency reimbursing the University for your salary and benefits through the interaccount procedures.

Currently, the University has filed objections to mining permit applications within the Lilley Cornett Woods. As a University employee, you are responsible for the management and supervision of the Lilley Cornett Woods.

You are asking whether it is appropriate for you to represent the University at an informal conference and at a formal hearing before your agency relating to the University's objections to the applications. In your capacity as an Agency employee, you will not participate in the decision-making process in regard to such applications, but the Agency for which you work will ultimately rule on the permit applications.

Your request for an opinion implicates KRS 11A.020(2), which provides as follows:

If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

It is the opinion of the Commission that this provision of the Executive Branch Ethics Code operates to prohibit you from representing the University at either the informal conference or the formal hearing relating to the University's objections to the permit applications. There is a clear conflict of interest here -- although not necessarily a direct conflict of interest. It is the Agency that will ultimately decide whether to grant the surface mining permit applications. Even though you will not take part directly in the decision-making process in regard to the applications, your employer, the Agency, will make the decision. You will note that the cited provision proscribes conduct that "might in any way lead members of the general public to conclude that [the public servant] is using his official position to further his

professional or private interest." (Emphasis ours.) The "professional interest" at issue here is your employment with the University. In sum, the Commission believes that your participation on behalf of the University could lead members of the general public to believe that you are using your official position as an Agency employee to further your professional interest in maintaining employment with the University.

If you have further questions, please feel free to contact us.