

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 93 – 26**

June 7, 1993

RE: State agency asks whether its employee may lease egg business.

This letter is in response to your May 14, 1993 request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 7, 1993, meeting of the Commission and the following opinion is issued.

Prior to the enactment of KRS 11A, the Executive Branch Code of Ethics, you requested an opinion from the Governor's General counsel. You inquired whether or not an egg inspector for your agency could inspect businesses where the inspector's father sells eggs. The General Counsel's office concluded that the code of Ethics did not apply because the employee was not engaged in the "transaction of business" with his father's company. However, it was emphasized that the appearance of impropriety existed and should be remedied.

Recently, you discovered the inspector, not his father, actually owned the egg business. You have received numerous complaints about the inspector from other wholesale egg dealers who claim the inspector hands out "business cards" while inspecting businesses. In an effort to resolve this matter the inspector has executed a lease of his egg business to a non-family member.

You are asking whether or not leasing, while an agriculture inspector, of the inspector's egg business to a non-family member is a violation of the Executive Branch Code of Ethics.

The Executive Branch Code of Ethics expanded upon the Executive Order pertaining to standards of ethical conduct which was used as a basis in the conclusion from your prior request. The new requirements impose additional prohibitions in regards to your request.

KRS 11A.040(3) provides:

No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.

11A.020(1)(a) and (c) provide:

(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;

...

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

As an agriculture inspector, the employee is acting as a representative in the transaction of business for the Commonwealth. His duty as an inspector of his "own" eggs presents a conflict of interest between his private interests and his responsibilities to the state.

Although he has leased his egg business to a non-family member, he still retains ownership of the business. The financial gain the inspector receives through this lease of his business will continue only if the business is successful. The Commission envisions circumstances where additional conflicts of interest could arise where the inspector uses his position to advertise the leased business, and, thus, obtain financial gain.

The Commission concludes that the inspector, a representative of the state, is prohibited from inspecting businesses which purchase eggs from his leased wholesale egg business.