

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 93 – 38**

October 18, 1993

RE: May Commissioner of Mines and Minerals serve as an officer or director of certain non-profit mining organizations?

This opinion is in response to your June 24, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 8 meeting of the Commission. The Commissioner was invited to respond in writing or to appear at the August 23 meeting. The Commissioner appeared at the September 20 meeting. After further consideration at the August 23, September 20 and October 18 meetings, the following opinion is issued.

The relevant facts presented to the Commission are summarized as follows. The Commissioner of the Department of Mines and Minerals (the "Department") historically has served as an officer and director of the Big Sandy Coal Mining Institute ("Big Sandy") and the Kentucky Mining Institute ("KMI"). An official of the state's largest labor organization contends the two organizations are dominated by coal-industry operators and the Commissioner's prominent role in the mining institutes creates a perception among mine workers that the operators' wishes may outweigh the workers' safety interest in the Department's enforcement programs.

The Commissioner has informed the Commission that his term as Big Sandy president ended in May, 1993, and that on August 10, 1993, he resigned as a Big Sandy board member "due to questions concerning conflict of interest. . .". Thus, the question as to Big Sandy is moot, although the Commission believes the Commissioner's decision to resign was the right one.

From the information provided, it appears KMI presents a number of programs designed to benefit the coal industry as a whole including rank and file mine workers. The Commission does not wish to cast any cloud over such programs. However, it is apparent that KMI is currently dominated by coal-industry management. The current board contains no mine workers or their elected representatives. In the interest of an appearance of strict neutrality in enforcement activities, the Commission believes the Commissioner should not be an officer or a voting member of the board of directors of KMI. The Commissioner has told the Commission that the cooperation of management is essential to a good mine-safety program and that such cooperation is enhanced by his work in the mining institutes. In light of this, the Commission is of the opinion that the Commissioner may serve as a non-voting, ex officio board member of KMI.

The Commission believes Department employees should not be selling KMI materials on state time. If the underground and surface mine books now put out by KMI are important to the Department's regulatory programs, the Department should arrange to issue such books itself and account for the proceeds according to usual state procedures.

The Commission encourages the Commissioner to attend and cooperate in those KMI and Big Sandy programs which clearly advance the public's interest in mine safety and the well being of all segments of the coal industry.