

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 94 - 15

March 22, 1994

RE: May employee work as inspector for division which is responsible for regulating spouse's business?

DECISION: No

This opinion is in response to your February 3, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 22, 1994, meeting of the Commission, and the following opinion is issued.

The relevant facts provided by you and representatives of the state agency involved are as follows. An employee in the Division of Waste Management (the "Division") of the Department for Environmental Protection within the Natural Resources and Environmental Protection Cabinet is married to the president and sole stockholder of a company registered as a recycler of hazardous waste. The company operates at four different locations within the state. The employee's primary job duty is to perform PCB inspections, but occasionally may also perform hazardous waste inspections for the Division. PCB inspections are performed at all facilities with electrical systems or transformers. Thus, the employee may conduct PCB inspections at facilities which are recyclers of hazardous waste.

The employee has no involvement with the spouse's private business. Additionally, the employee is aware of the conflict of interest that would exist if the employee were asked to inspect the spouse's business and thus, would not accept such assignments. You ask whether this situation is a violation of the Executive Branch Code of Ethics.

KRS 11A.040(3) provides:

(3) 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.

KRS 11A.020(1)(a) 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;

As an inspector for the Division, the employee is acting as a representative in the transaction of business for the Commonwealth. If the employee were to inspect a business which the spouse owns, it would present a clear conflict of interest. Additionally, the employee's duty to inspect businesses which may be in competition with the spouse's business puts the employee in a position which may involve a substantial conflict between personal interest and duties in the public interest.

The Commission believes the inspector, a representative of the state, should not inspect the spouse's business or any business that is in competition with the spouse's business. In addition, the inspector should not work in the same division as inspectors of the spouse's business, and the employee shall not have access to any confidential records of inspections of the spouse's business or competitors.

