

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 94 - 44

September 13, 1994

RE: May day care center owned by employee enroll children who are recipients of child care benefits from the agency for which the employee works?

DECISION: No

This opinion is in response to your July 25, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 13, 1994, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You represent an individual who is employed as a family service worker in the Department for Social Services ("DSS") of the Human Resources Cabinet. As such, the employee is responsible for determining eligibility of applicants to receive entitlement payments to day care centers. The employee is also responsible for investigating child abuse allegations at day care centers.

The employee owns a day care center which is located in the area served by the local DSS office for which the employee works. The employee is not the director of the center, nor is he involved in the day-to-day operations of the center.

The employee has not enrolled any recipients who receive DSS child care benefits at the day care center he owns. However, he is interested in doing so.

You state that Advisory Opinion 93-72 appears to allow ownership of a day care center by an employee as long as recipients of DSS benefits assisted by the employee are not enrolled at the day care center, and the employee is not involved in investigations concerning the day care center.

You ask for advice concerning the enrollment by the employee's day care center of children who receive child care benefits through DSS programs, but are not assisted by the employee.

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

. . . .

d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

KRS 11A.040(4) provides:

(4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase

made, entered into, awarded, or granted by any state agency. This provision shall not apply to a contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain or to agreements which may directly or indirectly involve public funds disbursed through entitlement programs.

The Commission believes the day care center owned by the DSS employee should not enroll children who are recipients of DSS benefits for child care payments, regardless of whether the recipients were assisted by the employee. Although the child care payments are funded through entitlement programs which are excepted under KRS 11A.040(4), the employee's position is such that situations may arise which present a conflict for the employee between his private interest and his duty in the public interest.

Such conflicts would arise if the employee were involved with investigations concerning his or his competitor's day care centers, if his coworkers were responsible for investigations involving the day care center owned by him, or if his coworkers were responsible for approval of applicants who were enrolled at the employee-owned day care center.