

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 95-3

February 9, 1998

RE: Reconsideration of Advisory Opinion 94-37. May water company donate to event sponsored by the Kentucky River Authority?

DECISION: No.

This opinion is in response to your January 19, 1995, request for a reconsideration of Advisory Opinion 94-37 from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 9, 1995, meeting of the Commission and the following opinion is issued.

You provide the relevant facts to the Commission as follows. On June 16, 1994, the Commission issued an opinion which states that a donation by the Kentucky-American Water Company to the Kentucky River Authority for purposes of the Kentucky River Sweep is not appropriate under the Executive Branch Code of Ethics. The opinion further states that the Authority is prohibited from accepting a donation from an entity which is regulated by a division within the same cabinet as the Authority, the Natural Resources and Environmental Protection Cabinet.

You assert that the Authority is attached to the Cabinet for administrative purposes only as provided by KRS 151.710(10) below. The Secretary of the Natural Resources and Environmental Protection Cabinet is an appointed member of the Authority. However, the Authority is not an organizational unit of the Cabinet, but is a separate agency created by statute. Based on this new information, you request the Commission to revisit the question of whether the Authority may accept donations from the Kentucky-American Water Company.

KRS 151.710(10) provides:

(10) The authority shall be attached for administrative purposes to the natural resources and environmental protection cabinet, and the cabinet shall provide the necessary personnel to provide administrative services for the authority.

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The Commission agrees that an organizational unit created by statute, such as a board or commission which is attached to an agency only for administrative purposes, is not necessarily a part of the agency to which it is attached, but may be a separate agency. In this case, we believe the Kentucky River Authority is a separate agency. However, because the Kentucky-American Water Company is required to pay water withdrawal fees to the Kentucky River Authority, the Commission believes a conflict may exist if donations are accepted by the Authority. The Authority is responsible for collecting fees from entities which use Kentucky River water and would have to take action against the water company if it did not pay the required fees.

Therefore, the Commission upholds its original decision that the Kentucky River Authority may not accept donations from the Kentucky-American Water Company. The Authority is not prohibited, however, from soliciting donations from other outside entities which may be regulated by the Natural Resources and Environmental Protection Cabinet but have no business or regulatory relationship with the Authority.

EXECUTIVE BRANCH ETHICS COMMISSION

By: Livingston Taylor, Chairman

