

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 95-15
REPLACING ADVISORY OPINION 94-64
April 27, 1995

RE: May an executive branch employee own stock or other interest in an entity which is regulated by, or does business with, his employing state agency?

DECISION: Yes, within limitations.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission"), on its own initiative, because questions have been raised by executive branch employees concerning whether an employee may own stock in an entity which is either regulated by or doing business with the agency for which the employee works. The Commission believes this question affects many employees. This matter was reviewed at the April 27, 1995, meeting of the Commission, and the following opinion was issued.

KRS 11A.005 provides:

11A.005 Statement of public policy.

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

- (a) A public servant be independent and impartial;
- (b) Government policy and decisions be made through the established processes of government;
- (c) A public servant not use public office to obtain private benefits; and

(d) The public has confidence in the integrity of its government and public servants.

(2) The principles of ethical behavior for public servants shall recognize that:

(a) Those who hold positions of public trust, and members of their families, also have certain business and financial interests;

(b) Those in government service are often involved in policy decisions that pose a potential conflict with some personal financial interest; and

(c) Standards of ethical conduct for the executive branch of state government are needed to determine those conflicts of interest which are substantial and material or which, by the nature of the conflict of interest, tend to bring public servants into disrepute.

KRS 11A.020(1) states:

11A.020 Public servant prohibited from certain conduct -- Disclosure of personal or private interest.

(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;

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

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

(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.050(3)(e) requires:

11A.050 Financial disclosure by officers, candidates, and public servants.

(3) The statement shall include the following information for the preceding calendar year:

...

(e) Names and addresses of all businesses in which the filer, his spouse, or dependent children has or had an interest of ten thousand dollars (\$10,000) at fair market value or five percent (5%) ownership interest or more.

Based on the provisions of the statutes above, the Commission believes that, in most situations, it is a conflict of interest for an employee to own an interest with a value of at least \$10,000 or which constitutes five percent (5%) of an entity which is regulated by or does business with his employing agency. A person owns a percentage of a corporation when he owns stock. He then has a personal, direct financial interest in the success of the company. Such interest could impair his ability to make agency decisions concerning such a company in a fair and impartial manner. Even if the employee is not an elected official or officer as defined by KRS 11A.010(7), occasionally he may be in a position to influence decisions concerning the company in which he has an ownership interest.

In addition, the statute below prohibits an employee from owning more than five percent (5%) of a corporation (or any other entity) which does business with any state agency.

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

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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 a public servant's spouse and dependent children should likewise not own stock or other interest in a company whose stock the employee is prohibited from owning. Other family members may own stock in such a company provided the family member is not holding the stock for the benefit of the employee, spouse or dependent children. However, as provided below in KRS 11A.040(3), an employee may not act as representative of the Commonwealth in the transaction of business with a company of which he or his family owns greater than a five percent (5%) interest.

(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.

The Commission believes there are some situations in which an employee or spouse may own stock or other interest with a value of over \$10,000 or five percent (5%) in a company or other entity which is regulated by or does business with the agency for which the employee works, as long as the employee is not violating KRS 11A.040(3) or (4) by doing so. Such situations include:

- 1) The stock or other interest is purchased exclusively through participation in a publicly traded mutual fund where the purchasing and selling decisions are completely out of the control of the employee or spouse;
- 2) The company or other entity does business with the employee's agency on a limited basis. "Limited Basis" means the entity does not receive more than \$5000 in state funds in any one calendar year from the employee's agency;
- 3) In his state employment, the employee is not directly involved in any matters (regulatory, business, or other) concerning the company or other entity of which he owns an interest.

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Therefore, except as provided above, an executive branch employee, his spouse, or dependent child, should not own an interest with a value of over \$10,000 or which is at least five percent (5%) of an entity which is regulated by or does business with the agency for which the employee works. This opinion is not intended to prohibit an agency from adopting internal policies concerning this issue which may be more restrictive than this opinion.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Livingston Taylor, Chairman

