

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 96-17

May 14, 1996

RE: Would employment of state employee's finance or spouse by company which is regulated by division for which employee wishes to work create a conflict of interest?

DECISION: Yes, unless employee abstains from decisions relating to that company.

This opinion is in response to your March 26, 1996 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 14, 1996 meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows: You are considering applying for a position with the Division of Air Quality, Department for Environmental Protection within the Natural Resources and Environmental Protection Cabinet as an environmental inspector in a regional office. This position would involve operating and maintaining compliance air monitoring instruments. Your fiancé is employed as a laboratory technician by an entity which has permits from and is inspected by the Division of Air Quality. He does not own an interest in the company which is greater than 5% of the total value. You ask whether the employment of your fiancé in a business which is regulated by the division for which you wish to work would pose a conflict of interest, and if not, whether a conflict would arise after you marry.

KRS 11A.020(1) states, in pertinent part:

(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;

...

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

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 96-17

May 14, 1996

Page 2

KRS 11A.020(3) states:

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

In Advisory Opinion 94-71 (a copy of which is enclosed), the Commission concluded that a conflict of interest existed for an employee whose parents were employed by an organization which received funding from the division where the employee served as assistant manager. However, because the employee's parents had no ownership interest in the organization, the employee was advised, in order to avoid a conflict of interest, to refrain from involvement in matters concerning the organization for which her parents worked. The Commission notes that your future spouse has no ownership interest in the business for which he works. Therefore, the Commission believes that, as long as you abstain from any inspections, decisions or discussions relating the company for which your fiancé works, you may accept the position as an environmental inspector within the Division of Air Quality. Such abstention should be disclosed in writing to your supervisor and maintained in your personnel file in accordance with KRS 11A.020(3).

The Commission's opinion applies during both your engagement and your marriage. Therefore, if you accept this position, in order to avoid a conflict of interest upon your marriage, you should likewise refrain from inspecting the business for which your spouse works, abstain from any decisions or discussions relating to the company, and disclose this abstention pursuant to KRS 11A.020(3).

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Ruth H. Baxter, Chair

Enclosure: AO 94-71