

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 96-25

May 14, 1996

RE: May an employee serve as director for division which intervenes in insurance rate cases?

DECISION: Yes, but should consider the effect on public confidence.

This opinion is in response to your April 23, 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: The 1996 General Assembly, in Senate Bill 343, granted the Office of the Attorney General (the "Office") the authority to intervene in health insurance rate requests before the Department of Insurance. The Office is to be responsible for intervening in insurance rate cases to argue on behalf of lower rates, in opposition to insurance companies' applications for higher rates. These cases would be presented to a hearing officer with a recommendation for a final decision by the Commissioner of the Department of Insurance. This decision may be appealed to the circuit court.

You wish to create a new division within the Office to carry out these duties and appoint a current member of your staff as its director. This staff member is the owner of 5.7% of the stock of a small, closely held corporation, a surgery center, which provides services on a fee basis. He is not an officer or director of the center. Patients receiving medical care at the center are responsible for the payment of fees which they may pay directly or which may be paid by a third party payor, such as an insurance company. Although the surgery center is not regulated by the Department of Insurance in its fee structure or operation, some insurance companies, as third party payors to the center, may seek rate increases from the Department of Insurance based upon increases in health care costs. Therefore, the center could receive income from insurance companies which are regulated by the Department of Insurance.

KRS 11A.005 provides:

(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.

KRS 11A.020(1) and (2) state:

(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.

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

KRS 11A.050(3)(e) requires that officers and public servants listed in KRS 11A.010(9)(a) through (i) list the "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."

The Commission, in Advisory Opinion 95-15 (copy attached), stated that these provisions make it a conflict of interest for an employee to own an interest with a value of at least \$10,000 or which constitutes five percent of an entity which is regulated by or does business with the agency for which the employee works. However, the surgery center does not constitute, from

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the facts presented, an entity which is regulated by the employee's agency. Although the Office has the authority to intervene in rate cases which may affect the amount of insurance a patient may receive for payment to the surgery center, and thus regulates insurance companies, the Office has no direct authority over the surgery center and does not regulate the surgery center. The income to the surgery center is not directly affected by the rate case decisions.

An employee is not prohibited from owning more than five percent of an entity which does business with another entity which may be regulated by the agency for which he works as long as no other conflict of interest exists. However, it appears to the Commission that intervention in health insurance rate cases will involve appearances before the Department of Insurance. KRS 11A.020(2) cautions an employee, when appearing before a state agency, to avoid any conduct which might lead the general public to believe he is using his official position for private gain. Thus, the employee is advised to consider carefully the effect his serving as director of this proposed division and his ownership in the surgery center will have on the public confidence.

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BY: Ruth H. Baxter, Chair

Attachment: AO 95-15