

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 96-32

July 2, 1996

RE: Does Secretary's ownership of stock in company seeking financial incentives create a conflict of interest?

DECISION: Yes, if value exceeds \$10,000.

This opinion is in response to your May 8, 1996, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 14 and July 2, 1996, meetings of the Commission and the following opinion is issued.

You provide the relevant facts as follows. The Cabinet for Economic Development (the "Cabinet") is responsible for stimulating the economic development of Kentucky. Specifically, the Cabinet is charged with the administration and implementation of the state's incentive programs. These programs are designed to foster increased interest in Kentucky as a business location and to retain businesses which are already located within the Commonwealth. The Cabinet's ultimate goal is reduction of the state's unemployment rate through the expansion or locating of employers in Kentucky.

Businesses which locate in the state may qualify for certain financial incentives designed to reduce or eliminate the costs of doing business in Kentucky. The Cabinet provides low interest loans, economic development grants, and/or tax exemptions to businesses for a period of ten to fifteen years. Cabinet staff work with companies in tailoring their incentive program applications which are then forwarded to the Kentucky Economic Development Finance Authority ("KEDFA") for final approval. KEDFA is a seven-member board comprised of individuals appointed by the Kentucky Economic Partnership Board and the Secretary of the Finance and Administration Cabinet.

The Secretary of the Economic Development Cabinet, who is responsible for the daily administration of the Cabinet's activities, is not a member of KEDFA. The Secretary owns approximately 1600 shares of stock (800 of which are in an individual retirement account) of a company which was granted preliminary approval by KEDFA, in December 1995, for tax incentives in return for agreeing to locate its headquarters in Louisville. The company also may be eligible for additional benefits in the future. You ask whether the Secretary's ownership of stock in this company presents a conflict of interest for the Secretary, and if so, what action should be taken to remedy the situation.

The Commission opined in Advisory Opinion 95-15 (a copy of which is enclosed) that an employee should not own more than five percent or \$10,000 of a company that is regulated by or doing business with the agency for which the employee works, unless the interest is purchased through a mutual fund, the company does a limited amount of business with the

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agency, or the employee is not directly involved, as part of his official duty, in matters pertaining to the company. Because the company is seeking financial incentives from the Cabinet, the Commission believes a relationship exists that prohibits the Secretary from owning a value of more than \$10,000 of the company. As head of the agency, the Secretary is considered to be directly involved in all matters of the Cabinet, and thus a potential for conflict exists.

The Commission advises the Secretary to divest himself of any shares of stock owned with a value which exceeds \$10,000, regardless of whether such shares are in an individual retirement account. Documentation of this action should be presented to the Commission.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Ruth H. Baxter, Chair

Enclosure: AO 95-15