

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 96-34

July 2, 1996

RE: May Cabinet Secretary delegate responsibilities regarding company of which he owns an interest in order to avoid a violation of the ethics code?

DECISION: No.

This opinion is in response to your June 4, 1996, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 2, 1996, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You serve as Secretary of the Finance and Administration Cabinet and are concerned about your ownership of stock in a company which has been preliminarily approved for a \$32 million tax incentive package and an economic development bond grant to be financed with economic development bonds.

As Secretary of the Finance and Administration Cabinet, your job responsibilities include signing and approving tax incentive packages, agreements concerning economic development grants, documents relating to the sale of economic development bonds, and letters for the use of economic development bond proceeds. In addition, as Executive Director of the State Property and Buildings Commission, you also sign resolutions approving bond sales on behalf of the State Property and Buildings Commission. You propose a delegation of such authority with respect to the company of which you own an interest in order to avoid a violation of the ethics laws.

You propose, in matters relating to the company in which you own an interest, to delegate your responsibilities as Secretary to the Deputy Secretary of the Finance and Administration Cabinet, pursuant to KRS 42.013. This delegation of authority would be made contingent upon the Governor's approval of any action taken relating to the company. You also propose to advise the State Property and Buildings Commission to authorize another member to sign, on behalf of the State Property and Buildings Commission, any resolution relating to economic development bonds. In addition, you would abstain from voting on any economic development bonds sales relating to the economic development package to be offered to the company in which you own an interest.

You state that you have abstained from voting at the meeting of the Kentucky Economic Development Finance Authority at which the tax approval package for the company was preliminarily approved. Additionally, you had no involvement with the company in negotiations, as your position does not require negotiations, only that you approve the use of bond proceeds and the final tax incentive and economic development packages to be awarded the company. You ask whether the delegation of this authority will comply with the Executive Branch Code of Ethics.

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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 agency, or the employee is not directly involved, as part of his official duty, in matters pertaining to the company. Because your official responsibilities include the approval of matters which will affect this company, the Commission believes a relationship exists that prohibits you from owning a value of more than \$10,000 of the company. Delegation of this responsibility to someone under your direction, either in the Finance and Administration Cabinet or on the State Property and Buildings Commission which you head, does not remove the potential for conflict which exists in your ownership of such interest. As head of the agency, you are considered to be directly involved in all matters of the Cabinet.

The Commission advises you to divest yourself of any shares of stock owned with a value which exceeds \$10,000. Documentation of this action should be presented to the Commission.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Ruth H. Baxter, Chair

Enclosure: AO 95-15