

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 96-37

September 5, 1996

RE: Does a conflict of interest, or the appearance of one, exist when a General Counsel for a state agency represents a client in court against another state agency?

DECISION: Yes

This opinion is in response to your July 1, 1996, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 5, 1996, meeting of the Commission and the following opinion is issued.

You ask whether a conflict of interest, or the appearance of one, exists when the General Counsel for a state agency represents a client in circuit court in a matter, unrelated to his official position, against another state agency.

KRS 11A.020(2) provides:

(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.

The Commission believes that a General Counsel for a state agency should not represent a client privately against another state agency. Such representation might give the appearance of a conflict of interest even if the representation involves matters unrelated to the General Counsel's official duties.

Additionally, KRS 11A.020(1)(b) provides:

(1) No public servant, by himself or through others, shall knowingly:

...

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

By representing a client against a state agency, the General Counsel would be attempting to influence a state agency in derogation of the state at large.

The Commission also recommends that you seek advice concerning this matter from the Kentucky Bar Association.

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BY: Ruth H. Baxter, Chair