

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 96-53**

December 17, 1996

RE: May employee accept position as Director over division which regulates bank where spouse is employed?

DECISION: Yes, as long as employee is not involved in any matters concerning the bank for which spouse works.

This opinion is in response to your November 8, 1996, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 17, 1996, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Department of Financial Institutions is considering promotion of one of its employees to the position of Director of the Division of Supervision. Among other things, the director of this division is responsible for the supervision of state-chartered banks to ensure compliance with state law and safe banking practices.

The employee being considered for the Director's position is married to a vice-president of a state-chartered bank. Should this employee be selected for the position, the Department believes that a "firewall" could be constructed to prohibit the employee from any involvement in significant decisions relating to the bank where his spouse is employed. The Department would require that significant decisions affecting the bank be made by the Commissioner of the Department after consultation with employees under the Director's supervision who directly regulate the bank. You ask whether such a "firewall" will allow the employee, if appointed Director, to be in compliance with the Executive Branch Code of Ethics.

KRS 11A.020(1)(a) provides:

- (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;

Additionally, KRS 11A.020(3) provides:

- (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 96-17, the Commission concluded that an employee whose fiancé worked for, but had no ownership interest in, a company that was regulated by the employee's division could avoid a conflict of interest by abstaining from involvement in inspections, decisions or discussions relating to the company for which his fiancé worked. Likewise, the Commission believes that the employee being considered for the position of Director is not prohibited from accepting the position as long as the employee's spouse does not own more than 5% of the bank, and the employee refrains, in his official capacity, from any involvement whatsoever in matters concerning the bank for which his spouse is employed. Such abstention should be disclosed and maintained in the employee's personnel file in accordance with KRS 11A.020(3).

Additionally, if the employee's spouse owns an interest with a value of more than \$10,000 or 5% of the bank, the employee should review Advisory Opinion 95-15 (a copy of which is enclosed) to guide his behavior.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Ruth H. Baxter, Chair

Enclosure: AO 95-15