

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 96-54
December 17, 1996

- RE: May company owned by the brother of correctional officers bid on contract to operate canteen at facility where his brothers are employed?
- DECISION: Yes, as long as his brothers are not involved in any discussions, decisions or recommendations concerning the contract to operate the canteen.

This opinion is in response to your November 25, 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 Western Kentucky Correctional Complex ("WKCC"), a correctional facility within the Justice Cabinet, Department of Corrections, recently solicited bids to contract for the operation of its inmate canteen and vending machine operation. A bid was submitted by M. W. Wholesale, the owner of which is the brother of two correctional officers at WKCC and a deputy warden at the Kentucky State Penitentiary. In addition, he formerly was the brother-in-law of the current Warden at WKCC; however, this relationship was severed more than twenty years ago. You request an opinion as to whether the bid from M. W. Wholesale may be accepted in light of the family ties the owner has with current correctional employees.

KRS 11A.020(1) and (3) provide:

(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.

...

(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.

Based on the provisions above, the Commission believes that WKCC may contract with M. W. Wholesale for the operation of the canteen and vending machines as long as the brothers of the potential vendor are not involved, as part of their official duties, in any matters, including discussions, decision and recommendations, concerning the contract. If the brothers would normally be involved in discussions or decisions concerning contracts, such abstention should be disclosed in writing and placed in their personnel files.

The Commission does not believe, because the potential vendor's former brother-in-law is employed as the Warden at WKCC, that WKCC is prohibited from contracting with M. W. Wholesale. However, it does advise the Warden, in order to avoid even the appearance of impropriety, also to abstain from decisions concerning the contract and disclose such abstention to his supervisor.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Ruth H. Baxter, Chair