

## ADVISORY OPINION 97-12

May 13, 1997

RE: May employee retain current position and also enroll children who receive entitlement benefits in day care center employee owns?

DECISION: No.

This opinion is in response to your March 12, 1997, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 13, 1997, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are currently employed as a Job Opportunities and Basic Skills Program (JOBS) Case Manager Specialist, Sr. with the Department of Social Insurance (DSI), Cabinet for Families and Children. In this position, you are responsible for authorizing entitlement payments to area day care centers. You have purchased a day care center in the area that is served by the local DSI office for which you work. In addition, one individual who receives entitlement benefits from the office for which work has children in the day care that you have purchased. You have discussed with your supervisor the possibility of switching to another position in your office, however, you would still be located next to co-workers who are responsible for entitlement payments to local day-care centers.

You ask the following questions:

- 1) *Will I be able to maintain my current position as Jobs Case Manager?*
- 2) *If I need to change positions, may I go back to regular case worker and not have anything to do with making child care payments, but still have access to the information on the computer?*
- 3) *Will I need to totally change to another agency?*

The Commission has addressed similar issues in previous opinions. In Advisory Opinion 93-72, the Commission stated that it was a potential violation of the Executive Branch Code of Ethics for a day care center owned by a DSI supervisor to receive DSI benefits through the JOBS and Aid to Families with Dependent Children (AFDC) programs. However, the Commission further stated in this opinion that it was not a violation for the DSI supervisor to partially own a day care center, if the center has no contracts with and receives no funding from the state, is not regulated by the supervisor's agency, and if the supervisor is not in a position to influence state decisions concerning the center.

Also, in Advisory Opinion 94-44, the Commission stated that a day care center owned by a Department for Social Services (DSS) employee should not enroll children who are recipients of DSS benefits for child care payments, regardless of whether the recipients were assisted by the employee. The Commission stated that conflicts of interest would arise if the employee were involved with investigations concerning his or his competitor's day care centers, if his coworkers

were responsible for investigations involving the day care center owned by him, or if his coworkers were responsible for approval of applicants who were enrolled at the employee-owned day care center.

Finally, in Advisory Opinion 95-34, the Commission stated that a day care center owned by an employee could enroll children who receive child care benefits from the agency for which the employee works as long as neither the employee, nor his co-workers, have any responsibility for investigation of child care centers or approval of applicants for child care benefits, and the children are not clients whom the employee serves.

Therefore, based on the above opinions, the Commission believes that it is not a violation of the Executive Branch Code of Ethics, KRS Chapter 11A, for you, as a JOBS case manager specialist, to own a day-care center which is licensed by the Cabinet for Families and Children. However, if you wish to retain your position as a JOBS case manager, you should not enroll or continue to serve children in your day-care center who are recipients of entitlement payments which are approved and processed through your office.

Changing positions within your office may not alleviate the potential for conflict since your coworkers, with whom you directly associate, still will be responsible for approval of applicants and payments for child care benefits.

As for transferring to another position within DSI or to another state agency, the Commission reiterates its position stated in Advisory Opinion 95-34, that you may enroll children in your day-care center who receive entitlement benefits as long as neither you, nor your coworkers, have any responsibility for the investigation of child care centers or the approval of applicants or payments for child care benefits, and the children you enroll are not clients that you serve in another official capacity.