

## ADVISORY OPINION 97-22

October 7, 1997

RE: May the Secretary for the Cabinet for Health Services serve as a member of the Board of Directors of the Metro United Way?

DECISION: No, in order to avoid the appearance of a conflict.

This opinion is in response to your August 27, 1997, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 7, 1997, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. Prior to his state employment, the Secretary for Health Services served as a member of the Board of Directors of Metro United Way. Metro United Way is a non-profit organization that supports a network of human service programs in the metropolitan Louisville and Southern Indiana area. The Secretary may be nominated again to serve on the Board and requests an advisory opinion concerning the propriety of such service.

The Secretary would not receive a salary, fee or other compensation for his service on the Board of Directors. However, as a member of the Board he may be involved in deliberations regarding the appropriation of charitable funds to organizations or agencies which also receive appropriations from or are regulated by the Cabinet for Health Services. Additionally, a charitable agency may compete for both United Way funding and funding from the Cabinet for Health Services. An increase or decrease in the amount of a United Way contribution could conceivably impact the amount of public funds required to fund a particular organization. The Secretary proposes that in such situations he disclose the potential conflict and abstain from voting on the appropriation.

KRS 11A.005(1) provides:

- (1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:
  - (a) A public servant be independent and impartial;
  - (b) Government policy and decisions be made through the established processes of government;
  - (c) A public servant not use public office to obtain private benefits; and
  - (d) The public has confidence in the integrity of its government and public servants.

Additionally, KRS 11A.020(1)(a) and (d) 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;

...

(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.

As a public servant in a position responsible for the administration of funding of various health care organizations, the Commission believes that in order to uphold the public trust the Secretary should refrain from involvement in any activities which may present any real or perceived conflicts of interest.

Abstaining from Board decisions regarding charitable organizations which also are funded through the Cabinet for Health Services would help to remove the Secretary from a conflict situation; however the Commission believes that, in order to avoid even the appearance of a conflict, the Secretary should not serve on the Board of Directors of the Metro United Way.