

## **ERROR CORRECTED 6/24/02**

### **ADVISORY OPINION 97-26**

December 16, 1997

- RE:
- 1) May General Counsel provide continuing professional education if such training is sponsored or approved by the agency, and the training will be provided to individuals licensed by the agency?
  - 2) May Board Member provide continuing professional education if such training must be approved by the Board on which he serves?
- DECISION:
- 1) No.
  - 2) Yes, because Board Member is not under the jurisdiction of the Commission.

This opinion is in response to your October 8, 1997, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 16, 1997, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. The Kentucky State Board of Registration for Professional Engineers and Land Surveyors (the "Board") regulates and licenses land surveyors. KRS 322.290(2)(h) mandates a program of continuing education for all land surveyors in the Commonwealth of Kentucky. Additionally, 201 KAR 18:190, Section 2, annually requires every land surveyor registrant to obtain two hours on the standards of practice at a seminar sponsored by the Board, and two hours on professional ethics for land surveyors at a seminar approved by the Board.

You ask:

- 1) *Is there a problem with your General Counsel, a full-time permanent employee, conducting seminars in the above requirements, for profit, and;*
- 2) *Is there a problem with a board member conducting seminars in the above requirements, for profit? This board member also serves on an ad hoc committee that pre-approves classes that are offered.*
- 3) *Would either the General Counsel or member of the board be in violation of the Executive Branch Ethics Law if he conducted seminars and accepted either actual expenses and/or honoraria from the professional societies which organize the seminars, in lieu of payment for services?*

KRS 11A.020(1) and (2) 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.

(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.

Additionally, KRS 11A.010(9) defines public servant:

(9) "Public servant" means:

(a) The Governor;

(b) The Lieutenant Governor;

(c) The Secretary of State;

(d) The Attorney General;

(e) The Treasurer;

(f) The Commissioner of Agriculture;

(g) The Superintendent of Public Instruction;

(h) The Auditor of Public Accounts;

(i) Each Railroad Commissioner; and

(j) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees

KRS 11A.010(7) defines "officer":

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky

Board of Education, the State Board for Adult and Technical Education, the Council on Postsecondary Education, and any other management personnel with procurement authority;

As a public servant, the General Counsel for the Board is prohibited from providing continuing education seminars for individuals regulated and licensed by the Board. His involvement in Board matters concerning land surveyors, and his seeking the same land surveyors as private customers, presents a conflict of interest between his official duty and his private interests. In addition, the fact that seminars he wishes to present must be sponsored or approved by the Board also presents a conflict between his private or personal interest and his duties in the public interest. If the General Counsel conducts continuing professional education classes and is reimbursed only for actual expenses, it does not appear that he receives a benefit. However, if the professional society which organizes the class conducts the class for profit, the potential conflict still exists for the General Counsel. Additionally, if he receives honoraria, he benefits from the conduct of the class regardless as to the source of honoraria. Thus, if the General Counsel or the professional society which is reimbursing him benefits from the conduct of the class, the fact that the class must be approved by his agency presents a conflict for him.

Regarding your second question, the Commission concluded in Advisory Opinion 93-53 (a copy of which is enclosed) that, unless a Board or Commission is specifically listed in the definition of officer stated in KRS 11A.010(7) above, a part-time board or commission member is not subject to the provisions of the Executive Branch Code of Ethics. Consequently, because the board member is not under the jurisdiction of the Commission, he is not prohibited from conducting continuing education seminars for profit.

However, it is the Commission's opinion that, if the Commission member presents seminars for profit which are also approved or sponsored by the Board, it will tend to damage public confidence in the independence and impartiality of the agency in sponsoring or approving continuing education classes.

Enclosure:     Advisory Opinion 93-53