

ADVISORY OPINION 98-39

October 27, 1998

RE: May employee lease land from his state agency through a competitive bid process?

DECISION: No.

This opinion is in response to your September 1, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 27, 1998, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. An adult institution of the Department of Corrections currently has 33 acres of land that the facility is not using. The Department recently determined that the facility should lease this land through a competitively bid contract to the highest bidder. The Department requested the Division of Real Properties within the Finance and Administration Cabinet to issue an invitation to bid on the lease for this land for the specific purpose of producing and harvesting hay. The individual who submitted the highest bid and was subsequently awarded the contract is an employee at the adult institution. You ask whether this situation presents any violation of the current ethics laws.

KRS 11A.040(4) provides:

(4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

(a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or

(b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or

(c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or

(d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction.

As stated above, the Executive Branch Code of Ethics prohibits an employee from bidding on or contracting with the state agency by which he is employed. Thus, although in this

case the employee is leasing from the state agency rather than the state agency leasing from the employee, the law still prohibits the employee of the adult institution from bidding or contracting with the Department of Corrections.

Consequently, if the contract for the lease is between the employee and the Department of Corrections, the Commission recommends that action be taken by the Department and the employee to terminate the contract and documentation of such action be sent to the Commission.

However, if the contract to lease the land is with the Finance and Administration Cabinet, rather than with the Department of Corrections, the employee is not prohibited from holding the lease provided he had no involvement with matters regarding the land or the lease as part of his official duty for the Department and provided the lease was competitively bid.