

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 99-6

February 18, 1999

RE: Does spouse's representation of book company before local schools present conflict of interest for regional language arts consultant?

DECISION: Yes, if spouse is representing company before schools that the regional language arts consultant assists in matters of instruction and curriculum.

This opinion is in response to your February 10, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 18, 1999, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. During November of 1998, letters were sent to textbook/instructional materials publishers which have contracts with the Department of Education (the "Department") asking them to identify persons who are representing their companies in Kentucky during the 1998-99 school year. Upon receipt of this information by the Department, names were reviewed for possible conflict of interest violations of KRS 156.460, or of the state ethics code, KRS Chapter 11A.

The Houghton Mifflin Publishing Company indicated that the spouse of an employee of the Department represents Houghton Mifflin in presentations of products to local school districts around the state. The employee, a regional language arts consultant employed by the Department through a memorandum of agreement with the Northern Kentucky Education Cooperative, assists schools on matters of curriculum and instruction. You believe that this situation presents a real or perceived conflict of interest for the employee, and also believe that the provisions in KRS 156.460 stated below apply to the employee indirectly through her spouse.

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KRS 156.460 provides:

No superintendent, teacher or other official or employee of any institution supported wholly or in part by public funds shall act, directly or indirectly, as agent for any person whose textbooks are filed with the chief state school officer.

You advised the employee that if her spouse continues to be involved with conducting business with the Department, she is not eligible to remain employed by the Department. You ask for an opinion from the Commission on this matter.

KRS 11A.020(1) provides:

- (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.

In Advisory Opinion 93-84 (a copy of which is enclosed), the Commission concluded that contract employees with the Department of Education are, in substance, executive branch employees. Thus, the language arts consultant is subject to the requirements of the Executive Branch Code of Ethics.

The Commission believes if the employee is involved in providing consultation to local school districts concerning their curriculum and instruction, it would be a conflict of interest for the employee's spouse to represent a company that sells products to the same local school districts to which the employee provides guidance. The employee would be in a position to consciously or unconsciously recommend curriculum that would promote the need for the instructional materials that her spouse sells.

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However, if the employee has no involvement in matters concerning the recommendation or selection of instructional materials for local school districts or in the development of curriculum that would direct the selection of instructional materials, the Commission believes that it would not present a conflict of interest for the employee's spouse to sell products to the local school districts.

The Commission has no authority to issue an opinion on the interpretation of KRS 156.460.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Don A. Wimberly

Enclosures: Advisory Opinion 93-84

April 10, 2008

Hon. Anne Keating
Attorney
Office of Legal Services
Department of Education
Capital Plaza Tower, First Floor
500 Mero Street
Frankfort, KY 40601

Reference: 021899.12

Dear Ms. Keating:

At its February 18, 1999, meeting, the Executive Branch Ethics Commission took up your request, dated February 10, 1999, in which you ask whether a spouse's representation of a book company before local schools presents a conflict of interest for regional language arts consultant.

The enclosed Advisory Opinion 99-6 is issued in response to your inquiry.

Sincerely,

Jill LeMaster, Executive Director

Enclosure: Advisory Opinion 99-6

cc: Ms. Linda Holbrook