

ADVISORY OPINION 99-8

April 13, 1999

RE: Does it present a conflict of interest for the Board of Medical Licensure to be staffed by employees who are paid by the Kentucky Medical Association?

DECISION: Yes.

This opinion is issued upon the Executive Branch Ethics Commission's ("Commission") own motion. This matter was reviewed at the April 13, 1999, meeting of the Commission and the following opinion is issued.

The following facts were provided to the Commission as follows. The Kentucky Board of Medical Licensure (the "Board") is responsible for protecting the public from incompetent and unqualified physicians. As part of its responsibility, the Board licenses only qualified physicians to practice in the state and takes appropriate disciplinary action against the licenses of physicians who violate the Medical Practice Act.

To carry out these responsibilities, the Board contracts for administrative services with the Kentucky Medical Association ("KMA") on an expense reimbursement basis. The contract is approved by the Finance and Administration Cabinet and the Legislative Research Commission's Personal Service Contract Review committee.

The contract with the KMA allows the board to select employees who are best qualified to fill the needs of the Board without having to comply with Personnel Cabinet regulations. The contract provides for an executive director and staff who are responsible for all the administrative functions of the board. The staff services provided through the contract account for approximately one-half of the workforce of the Board. The other half of the workforce is hired directly by the Board, and includes attorneys, investigators and their staff support who are responsible for the regulatory functions of the Board.

The Board does not believe that a conflict of interest exists in this arrangement. The KMA does not exert any influence on any of the executive director's duties or on the decision making of the Board.

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) 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;

Although the Commission does not believe that the Board is prohibited from contracting with the KMA for services, the Commission believes that individuals paid by KMA should not serve as staff for the Board. Such an arrangement allows for potential conflicts of interest for employees who are involved in the licensure of physicians and are paid by KMA, an association composed of physicians regulated by the Board.

The Commission believes that the Board could avoid the appearance of a, if not an actual, conflict of interest if it removed the KMA as a pass-through and paid all of its employees directly. If the KMA is providing nothing other than a pass-through, the Commission does not see the need for such a contract.