

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 99-20**

June 8, 1999

RE: May a newspaper of which an agency head owns an interest of more than 5%, but less than 15%, sell an advertisement to the agency which the employee heads?

DECISION: No.

This opinion is in response to your May 4, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 8, 1999, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The state agency for which you work is developing three multifaceted public service media programs as described below:

**Termite Treatment** – Your state agency entered into a settlement agreement in Franklin Circuit Court with an international company. One segment of the agreement includes \$200,000 from the company to provide consumer information on proper termite treatment.

**Telemarketing/Identity Theft** – Your state agency has received funds from several court-ordered settlements for use in consumer education. Education efforts on telemarketing fraud, identity theft, crimes against senior citizens, etc., are being planned.

**Slamming/Cramming** – Your state agency, along with another agency, is involved in developing a joint public service announcement on telecommunication fraud to alert consumers.

The approach your agency plans to use to publicize these consumer awareness programs includes television, radio, newspaper and other information pamphlets. The family of an employee who heads the state agency seeking to publicize these programs owns the only newspaper of general circulation in a particular county, and the agency head owns more than a 5%, but less than a 15%, interest in the newspaper. You ask whether the state agency seeking to promote these programs may purchase advertisements in this newspaper.

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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.

Because the agency head owns more than a 5% interest in the county's newspaper, he may not, through the newspaper, have an agreement with the state agency which he heads. Thus, although there is only one newspaper of general circulation in the county, the newspaper is prohibited from running such advertisements under an agreement with the state agency headed by the employee. However, the newspaper is not prohibited from having an agreement with other state agencies, not headed by the employee.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Don A. Wimberly

April 10, 2008

John Cubine, Director  
Division of Administrative Services  
Office of the Attorney General  
State Capitol, Suite 118  
Frankfort, KY 40601

*Reference: 060899.11*

Dear Mr. Cubine:

At its June 8, 1999, meeting, the Executive Branch Ethics Commission took up your request, dated May 4, 1999, in which you ask whether a newspaper of which an agency head owns an interest of more than 5%, but less than 15%, may sell an advertisement to the agency which the employee heads.

The enclosed Advisory Opinion 99-20 is issued in response to your inquiry.

Sincerely,

Jill LeMaster, Executive Director

Enclosure: AO 99-20