

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 99-22

June 8, 1999

RE: May an employee serve on the board of a private entity that receives funding from the state agency for which the employee works?

DECISION: Yes, provided the employee has no involvement with the private entity as a part of official duty.

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. An employee of the Cabinet for Families and Children (the "Cabinet") has agreed to serve on the board of directors of a private entity that conducts training programs. The private entity has submitted a proposal to contract with the Cabinet to provide training programs for clients of the Cabinet. A second entity has proposed to offer the same or similar services in the same county, thereby creating two competing proposals for funding by the Cabinet. You believe that the second entity may consider the Cabinet employee who sits on the board of the competing entity to have influence over the decision to award the contract. You ask whether the employee must resign from the board of directors even if he has not attempted to influence the Cabinet on behalf of the private entity.

KRS 11A.020(1), (2), and (3) 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;

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(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.

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

Please find enclosed several advisory opinions (96-6, 97-21, 97-22) which provide guidance in this matter. The Commission believes that the employee is not required to resign from the board of the private entity on which he serves provided he, and others under his supervision, abstain from any involvement in matters pertaining to the private entity on which he serves (i.e., review of contract proposals, funding of contract). Pursuant to subsection (3) above, he should document such abstention in writing and retain it in his personnel file.

The Commission believes that abstaining from involvement with the private entity on which he serves will serve to avoid any real or perceived conflicts of interest provided the employee is not the cabinet secretary or in a position in which he could not abstain. If the employee is in a position in which it would be impossible to abstain from matters pertaining to the private entity, then he should resign from the board to avoid any real or perceived conflicts of interest.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Don A. Wimberly

Enclosures: Advisory Opinions 96-6, 97-21, 97-22

April 10, 2008

Mark A. Rosen, Director
Division of Personnel
Cabinet for Families and Children
5W-D, CHR Building
275 East Main Street
Frankfort, Kentucky 40601

Reference: 060899.09

Dear Mr. Rosen:

At its June 8, 1999, meeting, the Executive Branch Ethics Commission took up your request, dated May 4, 1999, in which you ask whether an employee may serve on the board of a private entity that receives funding from the state agency for which the employee works

The enclosed Advisory Opinion 99-22 is issued in response to your inquiry.

Sincerely,

Jill LeMaster, Executive Director

Enclosure: AO 99-22