

Executive Branch Ethics Commission
ADVISORY OPINION 11-06
September 19, 2011

RE: Does a business owned by the brother of the Chair of the Louisville and Southern Indiana Bridges Authority create a conflict of interest that would preclude the Chair from serving in that capacity?

DECISION: No, so long as he continues to make all necessary disclosures regarding such matters and that, when necessary, he recuses himself appropriately.

This opinion is issued in response to your September 8, 2011, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). Your request was reviewed at the September 19, 2011 meeting of the Commission and the following opinion is issued.

You, or others on your behalf, have been in communication with the staff of the Commission virtually since your appointment as a member of the Louisville and Southern Indiana Bridges Authority (the "Bridges Authority"). You were appointed to the Bridges Authority on November 2, 2009, by the Governor and confirmed by the Senate on April 14, 2010, after which you were elected Chair. The Bridges Authority is an independent, bi-state governmental agency organized by the Commonwealth of Kentucky and the State of Indiana for the purpose of financing and constructing the Ohio River Bridges Project (the "Project") between Louisville and Southern Indiana. The Bridges Authority is comprised of Indiana and Kentucky citizens from various professional backgrounds who have demonstrated leadership and community service. There are 14 members, seven of whom are appointed by the Governor of Indiana, three of whom are appointed by the Governor of Kentucky, and four of whom are appointed by the Mayor of Louisville. Members of the Bridges Authority appointed from the Commonwealth are, pursuant to KRS 175B.030(5)(a), public servants subject to KRS Chapter 11A, the Executive Branch Code of Ethics (the "Code of Ethics").

In your letter requesting an advisory opinion, you provide a chronological listing of the proactive steps you have taken since your appointment to the Bridges Authority to seek advice and provide disclosures so as to assure your compliance with the Code of Ethics. Your brother owns a business, with which you have been affiliated, located in geographic proximity to the Project. You state in your letter that you have taken great care as a member of the Bridges Authority to avoid any situations involving your brother's business that could potentially relate to the Project and indicate that, with the advice of the Commission, it is your intention to

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continue to recuse yourself from any matters that involve your brother's business and the Project.

Your chronology of disclosure activities relating to your appointment to the Bridges Authority, as provided to the Commission, shows the following:

- November 20, 2009: Date of a letter written to you by a private attorney in which the attorney expresses the opinion that, in regard to your potential service on the Bridges Authority, you should spell out (i.e., disclose) your relationship with your brother's company in writing and request an advisory opinion from the Commission in order to assure your compliance with the Code of Ethics;
- Winter 2010: Time in which you indicate that you disclosed to the then-current Chair of the Bridges Authority nominee all relevant facts and circumstances relating to your situation before accepting the position of Treasurer of the Bridges Authority;
- April 22, 2010: Date on which you indicate you disclosed this same information to the Governor before accepting the position of Chair of the Bridges Authority;
- June 14, 2010: Date of a letter from the Governor's then-General Counsel to the Commission's Executive Director describing all relevant facts concerning the company owned by your brother, its operations and holdings, its ownership, and its applicable family relationships as they pertain to you;
- July 21, 2010: Date of a letter from the Commission's Executive Director to the Governor's then-General Counsel, expressing agreement, based on the information provided to the Executive Director, that your service on the Bridges Authority did not create a conflict of interest at that time;
- November 2010: Month in which you entered into a Memorandum of Agreement with your brother regarding your revised consulting role for your brother's company (you went from being a salaried employee of the company with benefits to being a part-time advisor on a set retainer with no benefits). The Memorandum identified the matters on which you would advise your brother and specifically stated that you could not discuss any Project related issues with him that was not public information and would not meet with him nor anyone with his companies along with any present or potential Project related clients;
- April 2011: Month in which you filed your Statement of Financial Disclosure with the Commission as required by the Code of Ethics;
- May 20, 2011: Date of a letter you provided to the Commission's Executive Director with a letter outlining the changes in your relationship with your brother's company and referencing the four above-described documents;
- June 3, 2011: Date of an e-mail to you from the Commission's Executive Director commenting on the sufficiency of the May 20 correspondence;
- July 7, 2011: Date the Bridges Authority presented a timeline toward commencing the procurement process, a copy of which was provided with your request for an Advisory Opinion (according to this document, the Bridges Authority is currently in the "clarify pre-procurement issues" phase);
- July 17, 2011: Date of a letter from you to your brother resigning from your role as an

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advisor to his company and informing him that even though you would no longer have a relationship with his business, you would still need to continue to avoid discussing the Bridges Project with him.

In your letter you further indicate that the Bridges Authority is not presently considering any proposals, contracts, or other business related to the procurement process, which is not expected to commence until a Request for Qualifications is issued late this year, nor had a decision been made as to the form of delivery model to be used for the Project.

You are seeking an Advisory Opinion from the Commission asking to confirm that 1) none of the facts and circumstances already disclosed create a present conflict of interest that precludes me from serving as a member or as Chair of the Bridges Authority, and 2) that your continued service as a member and as Chair of the Bridges Authority will not be affected by matters involving your brother's business provided that you have made all necessary disclosures regarding such matters of which you have knowledge and that you recuse yourself from any and all Bridges Authority deliberations and decisions related thereto.

The Code of Ethics contains a statement of public policy at KRS 11A.005, which states as follows:

- (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.
- (2) The principles of ethical behavior for public servants shall recognize that:
 - (a) Those who hold positions of public trust, and members of their families, also have certain business and financial interests;
 - (b) Those in government service are often involved in policy decisions that pose a potential conflict with some personal financial interest; and
 - (c) Standards of ethical conduct for the executive branch of state government are needed to determine those conflicts of interest which are substantial and material or which, by the nature of the conflict of interest, tend to bring public servants into disrepute.

In order to assure that these principles of ethical behavior are followed by public servants, the Code of Ethics contains provisions to assist public servants in determining whether to abstain from action on an official decision because of a possible conflict of interest. According to KRS 11A.030, a public servant faced with such a situation should consider the

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following guidelines:

- (1) Whether a substantial threat to his independence of judgment has been created by his personal or private interest;
- (2) The effect of his participation on public confidence in the integrity of the executive branch;
- (3) Whether his participation is likely to have any significant effect on the disposition of the matter;
- (4) The need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the executive branch; or
- (5) Whether the official decision will affect him in a manner differently from the public or will affect him as a member of a business, profession, occupation, or group to no greater extent generally than other members of such business, profession, occupation, or group. A public servant may request an advisory opinion from the Executive Branch Ethics Commission in accordance with the commission's rules of procedure.

When it is necessary for a public servant to abstain from a matter, KRS 11A.020(3) states as follows:

- (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.

It is clear from the Commission that you identified a potential conflict from the outset of your appointment to the Bridges Authority and that you have been very proactive and forthcoming in your handling of that conflict. Not only have you fully disclosed the potential conflict, but you have also taken steps to minimize it, first by reducing your involvement with your brother's company, then by resigning from any involvement with the company completely. You have also expressed your intent, on multiple occasions, to abstain in your official capacity from any matter involving your brother or his company, and informed your brother that you could not discuss the Bridges Project with him nor be involved in any meetings with him or anyone who works for him and potential Project related clients. It should be noted that no action has been taken to date by the Bridges Authority that involves your brother's company, either directly or indirectly, but rather you have recognized the potential for a conflict to develop as the project moves forward, based primarily on the location of your brother's businesses on the Louisville-Jefferson County riverfront.

It is the Commission's opinion that you have properly disclosed the potential conflict and are to be commended for the proactive steps you have taken thus far, including your decision to remove yourself from the position you held with your brother's company. While you cannot change the fact that your brother has business interests located in the proximity of the Bridges

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Project, you have already stated your intent to abstain in your official capacity from any situation that could arise involving your brother's business, and told your brother that you cannot discuss such matters with him as well. None of the facts and circumstances already disclosed create a present conflict of interest that would preclude you from serving as a member or as Chair of the Bridges Authority. In order for your continued service as a member and as Chair of the Bridges Authority to not be affected by matters involving your brother's business, you should follow through on your stated intent to recuse yourself from any and all Bridges Authority deliberations and decisions related thereto and disclose your abstention in writing to your superior, who in your case as Chair of the Bridge Authority would be the Governor. You should also continue to disclose any other conflicts that might present themselves as the Bridges Project moves forward, should the need arise.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Ronald L. Green

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