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EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 24-01
JANUARY 17, 2024

RE: Does a husband's employment through a Memorandum of Agreement with the agency where his spouse is employed create a conflict of interest.

DECISION: Not in this instance, where the wife was not involved in the hiring process and will not supervise her spouse.

This opinion is issued in response to a request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the January 17, 2024, meeting of the Commission and the following opinion is issued.

The following relevant facts were provided. The wife is an attorney employed with the Kentucky Department of Education as a KBE/KDE Academic Program Manager, a general non-merit title for employees performing varied duties throughout the agency. Her working title is "Policy Advisor and Deputy General Counsel." In this position, among her other duties, she advises the Office of Educator Licensure and Effectiveness (OELE) and its two divisions, Division of Educator Preparation and Certification and the Division of Educator Recruitment and Development.

A vacancy occurred in the position of Branch Manager of the Division of Educator Certification, within the Division of Educator Preparation and Certification. The Associate Commissioner, Division Director, and Human Resources Officer worked to fill the vacancy and eventually executed a Memorandum of Agreement with a local education cooperative, Central Kentucky Educational Cooperative (CKEC). The Memorandum of Agreement was negotiated between the Executive Director of the Cooperative (CKEC) and those representatives of the Department of Education. It provided for the employment of the husband of the KBE/KDE Academic Program Manager, who had served as a former employee of the Education Professional Standards Board.

The public servant has stated that she was not involved in any part of the development of the Memorandum of Agreement or in the hiring. She will not supervise or regulate her husband, but she will work with him upon occasion.

KRS 11A.020(1)(a), (c), and (d) 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;
 - ...
 - (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.

A family member of a public servant is not prohibited by the Executive Branch Code of Ethics from employment in the same state agency as the public servant. However, KRS 11A.020(1)(a), (c), and (d) prohibit a public servant from advocating or influencing in any way the employment, appointment, promotion, transfer, or advancement of a member of the public servant's family to an executive branch position of employment that the public servant directly supervises or manages.

As stated in Advisory Opinion 04-34:

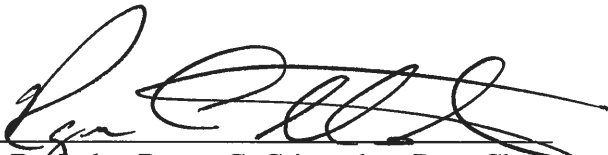
“Specifically, employees should not be involved in interviewing, recommending, or approving family members for positions within their employing agencies. They should not directly supervise a family member or evaluate a family member's job performance. The Commission also believes that a public servant should not participate in an action relating to the discipline of the public servant's family.... Such involvement by a public servant could be perceived as the use of one's official position to give a family member an advantage or a financial gain, and would also present a conflict between the public servant's private interest and duties in the public interest.”

Here, the public servant was not involved in negotiating the Memorandum of Agreement or in the selection process for the position that was ultimately filled by her husband. “An employee's appointment or advancement should not be penalized just because it would put him in a conflict situation, but management should consider viable options in appointing, promoting or transferring individuals so that potential conflicts will not exist.” Advisory Opinion 07-19. She has disclosed the relationship and has abstained from any participation in the selection process for the position or the supervision thereof.

The Commission further believes that the steps the public servant has taken in this situation are appropriate and necessary to remove any appearance of impropriety. She was not involved in the appointment of her husband to a position with the executive branch. As she

states that she will occasionally be working with her husband, she must ensure that every action she takes regarding the family member is impartial and fair and that she gives notice and abstains from action on an official decision if a conflict presents itself.

EXECUTIVE BRANCH ETHICS COMMISSION



By Judge Roger C. Crittenden, Ret., Chair