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ADVISORY OPINION 24-05
November 13, 2024

RE: May an employee of the Kentucky Department of Agriculture (the “Department”) be the beneficiary of a low-interest rate loan offered by the Kentucky Agricultural Finance Corporation (“KAFC”), an entity that is administratively attached to the Department?

DECISION: No. KRS 11A.040(4) prohibits employees of the Kentucky Department of Agriculture from benefitting from low-interest loans offered and approved by KAFC.

This opinion is issued in response to a request from the Kentucky Office of Agricultural Policy for an advisory opinion from the Executive Branch Ethics Commission (the “Commission”) regarding the propriety of employees of the Kentucky Department of Agriculture accepting KAFC subsidized loans. This matter was reviewed at the November 13, 2024, meeting of the Commission and the following opinion is issued.

In 2000, the Kentucky Agricultural Development Board (“KADB”) was created by the General Assembly to distribute 50% of the state monies received from the Tobacco Master Settlement Agreement for the general purpose of agricultural development in the Commonwealth. This Board is attached to the Department of Agriculture and staffing is provided by the Department, pursuant to KRS 248.707(10), (11) and KRS 248.725. In Advisory Opinion 21-12, the Commission addressed the question of whether Department of

Agriculture employees could apply for state funds, including subsidized grants and loans as provided for in KRS 248.711, that were administered by the KADB and answered the question in the negative. The Commission referenced the language of KRS 11A.040 (4) which states as follows:

(4) A public servant shall not knowingly himself or herself or through any business in which he or she owns or controls an interest of more than five percent (5%), or by any other person for his or her use or benefit or on his or her 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 or she is employed or which he or she 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) public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or 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; or
- (e) Sale of craft items to a state park by interim state employees designated as craftspersons under KRS 148.257.

Applying the language of KRS 11A.040(4), the Commission determined that none of the exceptions therein were applicable and that Department employees therefore could not apply to grant programs administered by the KADB.

The Department now asks the Commission to determine whether its employees may be beneficiaries of low-interest rate loans from the Kentucky Agricultural Finance Corporation. The Kentucky Agricultural Finance Corporation is attached to the Department of Agriculture and is staffed by the Department, with the executive director of the KADB also serving as executive director of KAFC. KAFC was created by statute in 1984. In 2003, as part of the KADB long-term plan for agricultural development, KAFC was awarded agricultural development funds to accomplish its mission of strengthening Kentucky agriculture by providing access to low-interest loan programs through joint partnerships with local lending

institutions. KAFC programs incentivize agricultural growth in the Commonwealth by providing below-market rate loans for agricultural infrastructure, agricultural processing, beginning farmers, diversification through entrepreneurship in agribusiness, and large/food veterinary programs. Applicants/borrowers work with a lending agency to submit a KAFC loan application for up to \$250,000 of their total loan amount. If approved by the Board, KAFC purchases \$250,000 of applicant's/borrower's loan from the lending agency at market rate and then grants the applicant/borrower below-market financing (2%) on that portion of the loan. Therefore, the applicant/borrower has a contractual obligation to pay back the lender according to the amended set of terms, and the lender has a contractual obligation to make payments to KAFC according to the KAFC loan agreement. Lending agencies receive commissions for service to KAFC on the loans. KRS 247.974.

Although the lending agency holds the initial loan given at market rate, it is clear from the guidelines of each of the loan programs that actual final loan approval rests with KAFC. The KAFC loan program confers a direct financial benefit to applicants/borrowers by subsidizing their agricultural loans. The decision as to whether to approve and grant the loan is made by KAFC and employees who obtain such loans have an "agreement" with KAFC. KRS 11A.040 (4) prohibits public servants from entering into contracts awarded by the agency by which they are employed. Therefore, Department employees may not accept benefits from the KAFC loan programs.

EXECUTIVE BRANCH ETHICS COMMISSION


By Sen. David K. Karem (Ret.), Chair