

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 00-7**  
February 25, 2000

RE: May former officer provide consulting services for state agencies with which he had direct involvement?

DECISION: No.

This opinion is in response to your December 14, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 25, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You resigned your position as a principal assistant with the Auditor of Public Accounts ("APA") on December 1, 1999. Your job duties for the APA included consulting in the area of investments for the Office of Financial Management and Economic Analysis ("OFMEA") and for the Kentucky Retirement Systems. In addition, you were involved with the Kentucky Lottery Corporation, state universities and private university foundations, Kentucky Public Employees' Deferred Compensation Authority, and the Kentucky Employers Mutual Insurance Fund. You currently are employed by Fund Evaluation Group, Inc., which provides investment consulting for retirement plans, foundations and hospitals. You ask the following:

- 1) May you be hired back as a consultant by the APA?
- 2) May you be hired as a consultant by the State Treasurer to help him review his board responsibility to oversee OFMEA and the Kentucky Retirement Systems?
- 3) May you be hired as a consultant by the Kentucky Retirement Systems?
- 4) May you be hired as a consultant for the University of Louisville Foundation, for which you have not produced any written documents?
- 5) May you be hired as a consultant for the Judicial Retirement Plan, from which you received a survey, but did not officially review?

You state that these entities actually would contract with Fund Evaluation Group, Inc. for your services, not with you personally. You do not receive a commission and such contracts would not affect your compensation directly.

KRS 11A.040(6) and (7) provide:

(6) No former officer or public servant listed in KRS 11A.010(9)(a) to (h) shall, within six (6) months of termination of his employment, knowingly by himself or through any business in which he owns or controls an interest of at least 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 was employed. This provision shall not apply to a contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general public or that are made at public auction.

(7) No present or former officer or public servant listed in KRS 11A.010(9)(a) to (h) shall, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with, or is regulated by, the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, or for which he received, prior to his state employment, a professional degree or license, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.

The Commission notes that you were an officer in your state employment, and thus you are prohibited for six months from contracting with or enjoying a part of a contract with the state agency for which you formerly worked. Consequently, you are prohibited for six months from contracting directly with the APA or from enjoying as a consultant a part of a contract with the APA.

Additionally, in Advisory Opinion 94-46 (a copy of which is enclosed), the Commission stated that a former officer and the company for which he then currently worked were required to refrain for six months from working on any matter in which the former officer was involved during his state employment. Thus, although Fund Evaluation Group, Inc., is not prohibited from contracting with the APA, for six months neither you nor anyone in the firm should be involved, as a consultant, in matters in which you were directly involved during the last three years of your state tenure. Such involvement by the firm would be considered doing business with the state in matters in which you had direct involvement, and you would be prohibited from accepting compensation for six months from such a business.

Similarly, regarding the State Treasurer's Office, the Kentucky Retirements Systems, the University of Louisville Foundation, and the Judicial Retirement Plan, you should determine

whether the contract between Fund Evaluation Group Inc., and the state agency would require you or someone in the company to work on matters in which you had direct involvement during the last three years of your state employment. If so, you and your company would be prohibited from such involvement. If not, your company could contract with these agencies to provide services, and you could serve as the consultant.

If you have returned to your former profession in your employment with Fund Evaluation Group, Inc., your firm is not prohibited from contracting with state agencies in matters in which you had direct involvement, but you must refrain for six months from working on any matter in which you were directly involved during your last three years. Additionally, you still should not enjoy any part of a contract with the APA even if you have returned to your former profession.

Furthermore, for one year, you should not represent a company before the state in matters in which you were directly involved during the last three years of your state tenure as provide by KRS 11A.040(9) below:

(9) A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, for a period of one (1) year after the latter of:

- (a) The date of leaving office or termination of employment; or
- (b) The date the term of office expires to which the public servant was elected.