

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 01-9
March 30, 2001

RE: May former Deputy Commissioner serve as a consultant?

DECISION: Yes.

This opinion is in response to your March 7, 2001, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 30, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Department of Medicaid Services (the "Department") in the Cabinet for Health Services (the "Cabinet"), desires to utilize the services of the former Deputy Commissioner of the Department who retired in September 2000. Upon his retirement from the Department, the former Deputy Commissioner went to work for the University of Kentucky as a consultant on health-related governmental issues such as Medicare, Medicaid, Stark compliance, civil monetary penalties for health care providers, and such other health related issues.

You believe it is in the best interest of the Commonwealth for the Cabinet and the Governor's Office for Policy and Management to consult with the former Deputy Commissioner relative to Medicaid's projected deficit because of his experience and expertise in Medicaid issues. However, the University of Kentucky does operate facilities that receive reimbursement from the Department. You believe that, provided the former Deputy Commissioner does not consult with the Cabinet on matters that would directly impact the reimbursement methodology used to arrive at rates paid by the Department to University of Kentucky facilities, he should be allowed to provide consultation to the Cabinet. You ask for guidance from the Commission as to what potential conflicts of interest may exist in this situation and how they may be avoided.

As a consultant to the Cabinet, it does not appear that the former Deputy Commissioner will be an employee of the Commonwealth. Thus, as a consultant, he will not be subject to the

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Executive Branch Code of Ethics. However, the Commission agrees that in order to uphold public trust in the integrity of the Department and to avoid any real conflicts of interest, the former Deputy Commissioner should not be consulted on those matters that will affect the University of Kentucky.

Additionally, the Commission reviewed the post-employment provisions in KRS 11A.040, and it does not believe the former Deputy Commissioner's service as a consultant to the Cabinet violates these provisions.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Bertie Oldham Salyer, M.A., A.M.E.