

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 01-37**

September 28, 2001

RE:            May former Commissioner of Medicaid represent university before the legislature and executive branch?

DECISION:    Yes.

This opinion is in response to your September 10, 2001, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 28, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. In 1998, the Cabinet for Health Services (Cabinet") contracted with your employer, the University of Louisville ("University"), for your services as Commissioner of the Department for Medicaid Services ("Department"). You have been a University employee since 1993.

At the time of your appointment as Commissioner of Medicaid, the Cabinet sought an advisory opinion from the Commission. You were advised by the Commission to recuse yourself from matters involving the University, and for six months, to recuse yourself from matters involving two entities that you had been representing as a lobbyist.

On March 15, 2001, you resigned as the Commissioner of Medicaid and returned to the University. You currently have no duties to represent the University or other entities before the legislature or any state agency; however, you request clarifications on what you are permitted to do in relation to the executive and legislative branches of state government should you be requested to represent the University or another entity. Specifically, you ask if there are any restrictions on your representation of the University before the legislature or the executive branch, including representation before the Department.

KRS 11A.010(7) and (9) define "officer" and "public servant", respectively:

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 01-37**

September 28, 2001

Page Two

commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, the Council on Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection;

- (9) "Public servant" means:
  - (a) The Governor;
  - (b) The Lieutenant Governor;
  - (c) The Secretary of State;
  - (d) The Attorney General;
  - (e) The Treasurer;
  - (f) The Commissioner of Agriculture;
  - (g) The Auditor of Public Accounts; and
  - (h) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

It appears that in your position as the Commissioner of Medicaid you were in fact performing the function of an officer as defined above. Although the contract for your services was not directly between you and the Cabinet, but was between the University and the Cabinet, the Commission still believes that you were, in substance, an officer and thus were considered a public servant during your tenure as Commissioner of Medicaid.

As a public servant you are not prohibited from returning to your former position with the University, pursuant to KRS 11A.040(7) and 11A.120; however you are subject to the post-employment restrictions in KRS 11A.040(8) and (9) which provide:

- (8) A former public servant shall not act as a lobbyist or lobbyist's principal in matters in which he 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.

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 01-37**

September 28, 2001

Page Three

(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.

Thus, for one year following your separation from the Department, you should not act as a lobbyist (legislative agent or executive agency lobbyist) concerning any matters involving the Department. As the Department head, you are considered directly involved in all matters of the Department. However, the Commission points out that as an employee of the University, you are not considered an executive agency lobbyist when acting as a representative of the University.

Similarly, for one year after your separation from the Department, you should not represent a person or business before the Department or any state agency regarding matters involving the Department. The Commission does not believe that a state university is a person or business as defined in KRS Chapter 11A. Thus, the Commission reverses interpretations in previous advisory opinions that imply that a state college or university is considered a person or business. Accordingly, although you are prohibited for one year from representing entities that may be related to the University, but are not a part of the University, before the state in matters in which you were directly involved, you are not prohibited from representing the University before the state in matters in which you have had previous involvement.

The Commission also includes Advisory Opinion 94-56 that provides guidance on a similar matter.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

---

BY CHAIR: Cynthia Stone, J.D.

Enclosure: Advisory Opinion 94-56