

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-7

January 25, 2002

RE: May former public servant represent a local governmental agency in a matter in which he had been directly involved?

DECISION: Yes.

This opinion is in response to your December 19, 2001, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the January 25, 2002, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You were employed by the Commonwealth of Kentucky, working in the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, Drinking Water Branch (the "Branch"). You worked in the Plans Review Section of the Branch, as a Professional Engineer (P.E.), and your job duties included review of the sanitary features of design of water treatment plants. On November 15, 2001, you left state employment. You accepted a job with Cann & Lee, LLC, an environmental engineering firm in Lawrenceburg, Kentucky.

In this private employment, you have been tasked with reviewing and submitting for payment on behalf of your employer's client, the Grayson County Water District (the "District"), a Certificate of Consulting Engineers as to Payment Request (the "Certificate"). This document shows your certification as that all expenses requested for reimbursement by the District were duly incurred and represents actual work done, that the Kentucky Infrastructure Authority's share of these expenses is accurate, and that none of the expenses were the subject of a previous submittal for payment.

Your question is whether you may sign the Certificate requesting payment from the KIA, which are processed via the Branch, in view of the requirements of KRS 11A, the Executive Branch Code of Ethics (the "Code").

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KRS 11A.040(9) states:

(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.

Although you were not directly involved in the funding requests and processes for the project in question, you were directly involved in the project in question when you worked for the Branch. In signing the Certificate, you would be “representing” the District before a state agency in a matter in which you had direct involvement during the last three (3) years of your state employment. However, the District is a governmental agency, and the Commission has held previously that the definition of “person” or “business” does not include governmental agencies or political subdivisions. Thus, your signature as a P.E. on a document relating to a matter with which you had direct involvement during your tenure when you were subject to the Code, does not fall under conduct proscribed by KRS 11A.040(9).

In sum, you may sign the Certificate as it is not a violation of KRS 11A.040(9) for the reasons stated above.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.