

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-27

May 8, 2002

- RE: 1) May former Division Director accept employment with school bus companies?
 2) May former Division Director accept employment with local school districts?
- DECISION: 1) No, if Director had direct involvement with the school bus companies as part of his official duties.
 2) Yes.

This opinion is in response to your April 22, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 8, 2002 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You recently were terminated from your employment with the Department of Education as the State Director of Pupil Transportation. You are seeking employment in the school bus industry within the state, but you believe that you will be working primarily out of the state. Several options are available to you in local school districts, as well as in the private sector. You state that you will not, in any way, represent a business before a state agency. However, because these possibilities will involve working with pupil transportation on the local and state levels, you believe the acceptance of such opportunities may elicit questions of conflict. Thus, you ask to what ethical restrictions are you subject in your post-employment and specifically you ask, may you work with personnel in areas of pupil transportation.

Please find the brochure entitled, *Leaving State Government?*, enclosed for your review. Stated in that brochure is KRS 11A.040(6), (7), (8) and (9) which provides the following regarding post-employment:

- (6) A former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, 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,

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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. This provision shall not apply to former officers of the Department of Public Advocacy whose continued representation of clients is necessary in order to prevent an adverse effect on the client.

(7) A present or former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, 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.

(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.

(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.

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As the Director of the Division of Pupil Transportation, you are considered to have been directly involved in all matters within your former Division. As a former officer you are prohibited, for six months, from accepting employment with or compensation from any person or business that does business with the state in matters in which you had direct involvement the last 36 months of your state employment. Although it appears that school bus companies do not do business directly with the Division you formerly supervised, they do business with the local school districts which your former Division directly regulated.

Thus, the Commission believes that if a school bus company does business with a local school district, and during the last three years of your state tenure you had direct involvement with the school bus company, or involvement with a local school district under the Division's regulatory control regarding the school bus company, you should not accept a position with the school bus company within six months of your termination. This opinion applies even if you will be working outside the state of Kentucky. You are not prohibited from immediately accepting employment with a school bus company with which you had no direct involvement as part of your official duties, but for one year should not represent that company before the state or lobby in matters in which you had direct involvement the last three years of your tenure.

Additionally, in Advisory Opinion 00-54, the Commission stated that it did not believe that a political subdivision was a person or business as defined in KRS Chapter 11A. Because a school district is considered a political subdivision, the Commission believes you would not be prohibited from immediately accepting a position with a local school district. However, for one year you should not represent the local school district or lobby for the local school district in matters in which you had direct involvement during the last three years.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.

Enclosure: Advisory Opinion 00-54