

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-36

June 28, 2002

RE: (1) May a retired state employee accept reimbursement of expenses from a professional organization during the first six months subsequent to retirement?
(2) May a retired state employee accept reimbursement of expenses from the former state agency employer during the first six months subsequent to retirement?

DECISION: (1) Yes.
(2) No.

This opinion is in response to your June 7, 2002, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 28, 2002, meeting of the Commission and the following opinion is issued.

You state the following relevant facts. You are currently employed as the Executive Director of the Kentucky State Board of Accountancy (the "Board"). You have announced your intention to retire from this position effective July 31, 2002. You are also a member of the Board of the Examiners (the "BOE") of the American Institute of Certified Public Accountants (the "AICPA"). The Board uses the CPA examination that is written and scored by the AICPA to determine the competency of persons wishing to become certified public accountants (CPAs) in Kentucky. The AICPA is the sole provider of this service. You state that upon your retirement from the Board you wish to continue to serve as a volunteer member of the AICPA BOE. The Board supports your desires. You ask the following questions:

(1) *"During the six (6) month period from August 1, 2002 to February 1, 2003, may I accept reimbursement of expenses from the AICPA for participation on this committee?"*

(2) *"Under KRS 11A.040(6), may I, during the period of August 1, 2002 through February 1, 2003, accept reimbursement of expenses to attend these BOE meetings from the Kentucky State Board of Accountancy?"*

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

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(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, 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.

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As an officer, you are subject to the post-employment provisions of KRS 11A.040(6) and (7). KRS 11A.040(7) prohibits you from accepting any economic benefit from a person or business that contracts with the state in matters in which you were directly involved for the last 36 months of your state employment. The AICPA does contract with the Board for the provision of testing services for CPAs, and as such you could not benefit from that contract. However, acceptance of travel expense reimbursement does not appear to fall under this prohibition, as such reimbursement does not constitute any economic benefit, but is only designed to offset expenses you would incur from service on the AICPA BOE. Thus, you could accept travel expense reimbursement from the AICPA for your volunteer service on the AICPA BOE during the six-month period of August 1, 2002 to February 1, 2003.. See Advisory Opinion 96-16 (a copy of which is enclosed). You should not, however, accept any compensation or other benefit from the AICPA during that six-month period.

Furthermore, under KRS 11A.040(6), you may not, by yourself or through others, “enjoy” any part of a contract or agreement with your former state agency. The Commission believes that reimbursement to you from your former agency would constitute an “agreement” with your former state agency and thus for six months after your retirement you may not accept such reimbursement from the Board.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.

Enclosure: Advisory Opinion 96-16