

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-3

February 13, 2003

RE: May state employees accept employment with vendor that provides a service that was formerly provided by the Cabinet?

DECISION: Yes.

This opinion is in response to your January 16, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 13, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Cabinet for Families and Children plans to outsource fiduciary services for its clients in the guardianship area, and has issued a Request for Proposal ("RFP") to secure a vendor. For a number of years, the Cabinet has provided these services through its Fiduciary Branch, but now plans to have a vendor provide such services and to reassign the majority of the six Fiduciary Branch personnel to other duties within the Cabinet. A core group of Fiduciary Branch staff will remain in order to perform required tasks and monitor the contract.

At a recent vendor's conference, a vendor seeking to fulfill the contract for fiduciary services asked whether it could pursue the current employees of the Fiduciary Branch and offer them employment. You stated that you believed that there would be a conflict with the Executive Branch Code of Ethics if the vendor were to offer employment to one of the state employees to help fulfill the contract. You believe that, for one year after leaving state employment, a state employee from the Fiduciary Branch could not work for the vendor to perform the terms of the contract. You ask for an opinion to see if your interpretation is correct.

KRS 11A.130 provides:

Nothing in this chapter shall be construed to prohibit an officer or public servant employed by an agency that is privatized from accepting employment from the person or business which is operating that agency if the officer or public servant was not involved in making the decision to privatize or in developing the provisions of the privatization contract.

KRS 45A.550 states that “privatize” means to contract out in order to procure services of a private vendor to provide a service that is similar to, and in lieu of, a service provided by state employees of the privatizing agency.

The Commission believes that, based on the provisions above, employees who perform a service that is outsourced to a vendor or “privatized” are not prohibited from immediately accepting employment with the vendor procured to provide the service, as long as the employee had no involvement in the decision to privatize or in developing the provisions of the RFP or contract awarded.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.