

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-4

February 13, 2003

RE: May former state employee immediately represent new employer before former state agency?

DECISION: Yes, provided subject matter of representation does not involve matters in which employee had direct involvement.

This opinion is in response to your January 24, 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. You plan to retire from your employment as the Director of Renaissance Kentucky with the Kentucky Housing Corporation ("Housing"), and you propose new employment with a private organization that does business with Housing. Organizationally, within Housing, you are under the Division of Administration and report to the Senior Director who reports to the Chief Officer of Administration. As such, you are not considered an "officer" as defined in KRS Chapter 11A.

Your job responsibilities include providing direction and coordination of the staff of an Alliance of four state agencies (including Housing) and three private organizations to carry out the mission, goals and objectives of the Renaissance Kentucky initiative. Renaissance Kentucky assists local units of government in finding state and private resources to carry out their community-generated priorities. Funds are awarded by the Alliance to units of local government and the awards are approved by an Alliance Board comprised of representatives of the following member entities: Kentucky Housing Corporation, Kentucky Heritage Council, Kentucky Department of Local Government, Kentucky Transportation Cabinet, Fannie Mae, Federal Home Loan Bank of Cincinnati, and Kentucky League of Cities.

In addition to your role with the Alliance, your responsibilities at Housing include sitting on a steering committee that debates and recommends policy to the Chief Officers and the

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Chief Executive Officer as it relates to dissemination of Housing resources to private developers, nonprofit organizations and public entities. Such funds are under the authority of the Division of Programs and the Division of Finance, not the Renaissance Department, but the funds can be used in a Renaissance community.

You state three issues on which you would like an opinion:

1. *Six-month employment ruling. You are not an officer of Housing; therefore, you are assuming that you would not be subject to the six-month prohibition of accepting employment;*
2. *12 month prohibition of representation of new employer to Housing. It is sort of unclear here since this new employer receives funding from divisions of Housing with which you do not "directly" work, but do give input to officers relating to policy and award of funding. Are you prohibited from representation in front of the Divisions of Finance and Programs since you did not work in those divisions? You do understand that you could not attend events or represent your new employer in Renaissance activities for 12 months;*
3. *To make things more complicated, this new employer utilizes the Historic Tax Credit Program that is administered by the Kentucky Heritage Council (that division of the Heritage Council does not participate in Renaissance). May you represent your new employer to the Kentucky Heritage Council and other members of the Alliance that are state agencies? Although these agencies coordinate resources, neither the Alliance nor you are authorized to review or approve any funding from these resources with the exception of federal TEA-21 funding administered by the Kentucky Transportation Cabinet and set-aside for Renaissance communities*

You have correctly assumed, because your position does not appear to be an "officer" position as defined in KRS 11A.010(7), that you are not subject to the post-employment provisions in KRS 11A.040(6) and (7). Thus, upon your retirement from state employment, you may accept employment immediately with any private organization even one that does business with Housing. However, as provided in Advisory Opinion 00-6 you should not discuss any future employment options with any organization with which you are currently involved as part of your official duty. If you wish to seek employment with such an organization, you should abstain from all matters regarding that organization and disclose your intention in writing pursuant to KRS 11A.020(3) below:

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(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

Additionally, you are subject to the post-employment provisions in KRS 11A.040(8) and (9) provided below:

(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.

For one year following your retirement, you should not represent your new employer before Housing regarding matters in which you were directly involved (or anyone under your supervision was directly involved) during the last three years of your state employment. You are not prohibited from representing your new employer before Housing if your representation pertains to matters with which you had no direct involvement during your state tenure.

Thus, if your representation involves your new employer's funding received from Housing and you had input in such funding matters even though the funding was not from the divisions for which you did not directly work, you are still prohibited for one year from such

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representation. However, if your representation will not involve any matters in which you were directly involved at Housing, you may immediately represent your new employer before Housing. The fact that your new employer receives funding from Housing does not necessarily prohibit you from representation; what is at issue is the subject matter of your representation.

The same provisions would apply when representing your new employer before other state agencies also. You may immediately represent your new employer before other state agencies that are members of the Alliance, provided your representation does not involve matters in which you were directly involved during the last three years of your employment.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: