

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-48

December 18, 2003

RE: May employee accept post-employment with federal agency which maintains facilities the employee inspects as part of his official duty?

DECISION: Yes.

This opinion is issued in response to your December 2, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 18, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You currently are employed as an environmental engineer in the Dam Safety and Floodplain Compliance Section of the Water Resources Branch, Division of Water, Natural Resources and Environmental Protection Cabinet. Your job involves regulating and inspecting all dams in the Commonwealth of Kentucky, including dams constructed and maintained by the Natural Resources and Conservation Service (NRCS). NRCS is a federal agency that controls water management plans for watersheds by constructing dams and is under the federal Department of Agriculture.

You ask: *Should a position with NRCS open, would you be allowed to apply and accept a position with this federal agency, NRCS?*

The post-employment provisions in KRS 11A040 (7) and (9) provide:

(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

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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.

...

(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.

From the information that you have provided, it does not appear that you are an officer (major management personnel) as defined in KRS 11A.010(7). Thus, you are not subject to the provisions in KRS 11A.040(7) above. Upon your resignation, you immediately may accept employment with the NRCS or any other entity.

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However, you are subject to the provisions in KRS 11A.040(9) above and for one year should not represent a person or business before the state in matters in which you were directly involved during the last three years. "Represent" as defined in KRS 11A.010(17) "means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else". Because the NRCS is a governmental agency, and Commission previously has held that the definition of "person" or "business" does not include governmental agencies or political subdivisions, this provision would not apply to your employment with NRCS, a federal agency.

Additionally, if you wish to seek employment with NRCS, you should not use your position to give NRCS an advantage, you should abstain from direct involvement in matters relating to NRCS, as part of your official duty for the Division of Water, and you should disclose your intention in writing pursuant to KRS 11A.020(3) provided below:

(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.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 02-7