

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 04-21

May 27, 2004

RE: May former Executive Director of the Parole Board immediately serve as a consultant and sub-contractor for company owned by an individual with whom he had direct involvement as part of his official duty?

DECISION: Yes.

This opinion is issued in response to your May 10, 2004 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 27, 2004 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You retired from state government employment as Executive Director of the Kentucky Parole Board (the "Board") on April 30, 2004. Your duties included all administrative and financial affairs of the Board and its employees, however you reported directly to the Secretary of the Justice Cabinet.

During fiscal years 2001-02 and 2002-03, the Board, through the Office of the Secretary of the Justice Cabinet, contracted with George Washington University to develop and implement an objective-based risk assessment instrument. The work on this contract was performed primarily by Dr. James Austin, who at the time was the Director of the Institute on Crime, Justice, and Corrections at George Washington University.

Dr. Austin is no longer employed by George Washington University and has formed his own company, JFA Associates, of which he is the president. His firm, among other things, performs consulting work for Parole Boards around the nation. You would like to work as a sub-contractor for JFA Associates. You ask if you may do so without violating post-employment laws in the Executive Branch Code of Ethics.

The laws relating to post-employment found in KRS 11A(7), (8), 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 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.

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 04-21
May 27, 2004
Page Three

Although Mr. Austin represented George Washington University before the Board, because the Board technically did business with George Washington University, and not with Mr. Austin, the Commission believes that you would not be prohibited, immediately following your retirement, from accepting compensation from JFA Associates or Mr. Austin.

However, for one year following your retirement, you should not act as or employ a lobbyist, including an executive agency lobbyist, in matters in which you had direct involvement the last three years. You also should not represent, for one year, JFA Associates or Mr. Austin before the Board in matters in which you had direct involvement the last three years.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.