

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 04-27**

August 5, 2004

RE: May former employee seek clients for law firm if the clients are regulated by the employee's former agency?

DECISION: Yes, provided the employee does not work on any matters, for the clients, in which he was directly involved during the last three years.

This opinion is issued in response to your July 6, 2004 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 5, 2004 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You currently serve as the Assistant General Counsel for a regulatory agency. From November 1999 through June 30, 2004, you served as the General Counsel for the agency, supervising the agency's staff attorneys. You are aware that when you leave your employment you will be subject to several post-employment laws found in KRS Chapter 11A. You ask the following questions:

- ❖ *If I accept employment with a law firm, what are the limitations on my ability to discuss prospective employment for the firm with entities that are regulated by my agency?*
- ❖ *If such an entity contacts me, must the call be referred to someone else in the firm?*
- ❖ *May I appear at seminars or lectures that might result in inquiries from such an entity?*

KRS 11A.040(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

**ADVISORY OPINION 04-27**

August 5, 2004

Page Two

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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(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.

As provided above, you may return to the practice of law for which you held a professional license prior to your state employment. However, for six months following your termination from state employment you may not work on any matters in which you had direct involvement during the last three years of your state tenure. You are considered to have been directly involved in any matters in which the attorneys you supervised have had direct involvement.

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 04-27**

August 5, 2004

Page Three

Upon your employment with a law firm, you would not be prohibited from seeking clients, for the firm, that are regulated by your agency, but if the firm obtains such clients, for six months you could not work for the clients on any matters with which you or your staff had involvement the last three years. Similarly, if an entity regulated by your agency contacts you once you are employed, you would not be required to refer the call to someone else in the firm, provided the topic of discussion does not pertain to matters in which you (or your staff) were directly involved the last three years. You also are not prohibited from speaking at or attending lectures or seminars where you may have inquiries by such entities regulated by your agency.

Additionally, as you have stated and as stated above, you may not represent any clients before the state in matters in which you or your staff had direct involvement the last three years of your state employment. You also must abide by the provisions of KRS 11A.040(6) and (8).

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.