

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 05-10
February 18, 2005

RE: Guidance on Post-Employment Lobbying

This opinion is issued in response to your February 9, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 18, 2005 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You retired as a Major with the Kentucky State Police on December 31, 2004, and have accepted a position as the Executive Director of the Kentucky State Police Professional Association ("KSPPA"). The KSPPA is a non-profit, fraternal and philanthropic organization that represents some 1200 members of the Kentucky State Police, both sworn and retired. You are the only paid executive within the KSPPA.

You are not registered as a lobbyist, and you indicate that your understanding is that in order to lobby you must wait one year before you may register as a lobbyist. Periodically, however, members of the General Assembly ask you questions regarding the position of the members KSPPA represents on KSP issues before the legislature. You have been asked to speak before legislative committee meetings and hearings. Also, the KSPPA hosts a weekly legislative breakfast where General Assembly members and their staffs eat breakfast and you are present.

You ask for an advisory opinion for guidance as to what you may or may not do in your post-employment activities relative to lobbying.

Please find enclosed for your review the brochure entitled *Leaving State Government?*, which includes guidance in KRS 11A.040(8) pertaining to post-employment lobbying 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:

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- (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.

Lobbyist is defined in KRS 11A.010(11) to mean “any person employed as a legislative agent as defined in KRS 6.611(22) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(8).” Lobbyist's principal is defined in KRS 11A.010(12) to mean “the entity in whose behalf the lobbyist promotes, opposes, or acts.”

Thus, because you are prohibited for one year following your retirement from acting as a lobbyist or a lobbyist's principal in matters in which you had direct involvement that last three years of your state tenure, you may not register as a legislative agent or executive agency lobbyist until January 1, 2006.

An executive agency lobbyist is defined in KRS 11A.201 (8) (a) to mean “any person engaged to influence executive agency decisions or to conduct executive agency lobbying activity as one (1) of his main purposes on a substantial basis.” From the information provided, it does not appear that you are attempting to influence executive agency decisions.

However, because you may be answering questions of legislators regarding the position of members of KSPPA on legislation, and thus may have direct contact with legislators concerning legislation, the Commission recommends that you seek guidance from the Kentucky Legislative Ethics Commission as to whether such activity is “lobbying” and requires registration as a “legislative agent” as defined in KRS 6.611(26) and (22)(a) respectively.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: James S. Willhite