

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 05-15

March 30, 2005

RE: Is former employee's acceptance of a position with newly created non-profit corporation in compliance with ethics code?

DECISION: Yes.

This opinion is in response to your March 10, 2005, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 30, 2005, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You worked for state government from December 1995 through February 28, 2005. During the last three years of your tenure, you served as an Executive Assistant to the Governor (March 2002 through May 2002), you left state government to serve as Chairman of the Kentucky Democratic Party (mid-May 2002 through mid-November 2002), you again served as Executive Assistant to the Governor (mid-November 2002 through late November 2003), and lastly you served as Executive Director of the Board of Claims and the Crime Victims Compensation Board (Late November 2003 through February 2005). As of March 1, 2005, you took a position with a newly created non-profit medical development corporation. Your responsibilities with the new corporation will be to i) help develop collaborative research initiatives between the medical center that created this corporation and other medical entities in the Louisville area; ii) obtain funding for the development of the local economy and for the expansion of medical programs and facilities in Pike County; and iii) perform other activities as directed by the corporation. You indicate that you have been advised by your legal counsel that you are in compliance with the state ethics code in general, and more specifically with KRS 11A.040(6), (7), (8), and (9), but you request an opinion from the Commission regarding same as well as any additional items with which you need to comply.

Please find enclosed the Commission's "*Leaving State Government?*" brochure. As an Executive Director you were an officer as defined in KRS 11A.010(7) of the Executive Branch

Code of Ethics (the "Code"). Thus, you are subject to the Code's post-employment provisions set forth at KRS 11A.040(7), reprinted below:

(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.

Regarding the provisions of KRS 11A.040(7), you are prohibited for six months after leaving your position from accepting employment or compensation from any company with which you had direct involvement during the last three years of your state tenure. As an executive director, you are presumed to have had direct involvement in all matters under your supervision. It appears from the information you have provided that neither you nor anyone under your supervision would have been directly involved with matters involving your new employer during the last three years of your state tenure as it is a newly created corporation. As a result, based on the information provided, you would appear to be in compliance with KRS 11A.040(7).

Further, based on the information provided, there is no indication that your new employer has a contract or agreement with an agency by which you were employed when you left state

government, but please remain aware of the restrictions contained in KRS 11A.040(6) as stated on the included brochure.

You also must comply with 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 from the date you left state government, you may not act as a lobbyist for your new employer in matters in which you (or anyone under your supervision) had direct involvement during the last thirty-six (36) months of your state employment. Also, for one year, you may not represent your new employer before the state in matters in which you (or anyone under your supervision) were directly involved during the last thirty-six (36) months of your state employment with the Office of the Governor, the Board of Claims, or the Crime Victims Compensation Board. You would not be prohibited from working on such matters for your new employer during the year so long as you comply with KRS 11A.040(7) above and you do not communicate with any state agency concerning such matters.

In sum, based on the information provided, it would appear that your position with your new employer complies with the Code's post-employment requirements; however, as you have

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 05-15
March 30, 2005
Page Four

not advised the Commission as to whether any matters on which you will be working for your new employer are matters in which you had direct involvement during your state tenure, it cautions you to keep in mind the restrictions set forth in KRS 11A.040(8) and (9).

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: James S. Willhite

Enclosure: *Leaving State Government?*