

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 05-21**

May 27, 2005

RE:           Upon retirement, may former employee accept employment with vendor of, or entity regulated by, employee's former agency?

DECISION:   No, if employee or anyone under his supervision had direct involvement with the vendor or regulated entity.

This opinion is issued in response to your March 30, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 27, 2005 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You currently serve as the Deputy Commissioner of the Kentucky Department of Fish and Wildlife Resources ("Fish and Wildlife"). Prior to your service as Deputy Commissioner, you served as the Director of the Division of Administrative Services.

Fish and Wildlife regulates merchants who sell sport hunting and fishing licenses and permits, pursuant to 301 KAR 5:001-050. Fish and Wildlife also contracts with businesses, through the Request for Proposals process, to collect and produce data resulting from draw and quota hunt applications and harvest.

Neither your current or former positions with Fish & Wildlife involve or involved any direct contact with license agents or vendors. You have never evaluated a bid resulting from a solicitation, although you did provide management level approval. As the Administrative Services Director, you did have third line supervision over the Licensing Section, which transacted business with license vendors.

You plan to retire from state employment, effective June 1, 2005. You ask the following:

*May I accept employment from a business (i.e.: Wal-Mart) who either acted as a license vendor selling licenses or permits issued by our agency and/or a vendor who also provided a service (i.e.: Bass-Pro Shops) within the first six months of retirement?*

Please find enclosed the brochure entitled, *Leaving State Government?* provided for your review.

KRS 11A.040(7) provides:

(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.

As a director of a division, you are considered to have been directly involved in all matters of that division during your tenure as director. Similarly, as the Deputy Commissioner of Fish & Wildlife, you are considered to be directly involved in all matters within Fish and Wildlife over which you have any supervisory responsibilities or any involvement.

You are prohibited, for six months, from accepting employment or compensation from any person or business that does business with or is regulated by the state and you (or anyone under your supervision) were directly involved in any of those business or regulatory matters

during the last three years of your employment. Thus, although you may not have had direct contact with license agents or vendors, if someone under your supervision did have direct contact with such license agents or vendors, you would be considered to have been directly involved in such matters, and would be prohibited for six months from accepting employment or compensation from the license agent or vendor, unless you are returning to the former profession or occupation in which you were employed prior to your state employment. Then you may immediately accept such employment, but for six months should not work on any matter in which you were directly involved the last three years.

Further, for one year following your retirement, you may not act as a lobbyist, or represent a person or business before the state, in matters in which you or anyone under your supervision had direct involvement during the last three years, as provided in KRS 11A.040(8) and (9) 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.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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**BY CHAIR:** James S. Willhite