

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 05-31
September 2, 2005

RE: May former Executive Director immediately represent persons before office he formerly headed?

DECISION: Yes, provided the representation does not include matters that were before the office during the last three years of his tenure.

This opinion is issued in response to your June 7, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 2, 2005 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You served as the Executive Director for the Health and Family Services' Office of Certificate of Need from July 1996 through April 2005. You recently have retired from state employment and returned to your former profession of the practice of law.

You believe that under KRS 11A.040(9) and Franklin Circuit Court case styled *Randall S. Strause vs. Executive Branch Ethics Commission*, No. 99-CI-01065, you immediately may represent clients, including persons or businesses who may have appeared before the Certificate of Need Office during the last thirty six months, so long as the representation does not involve a particular matter that was pending before that office during the last thirty-six months of your tenure as the Executive Director.

It is your further belief that under the holding in the aforementioned case and the language of KRS 11A.040(7), that you immediately may accept employment, compensation, or other economic benefit from a person or business that contracts or does business with, or is regulated by, the state in matters in which you were directly involved so long as you are doing so as part of your return to private legal practice (for which you obtained your professional degree prior to state employment) and so long as you refrain from working on any matter that was pending before the Certificate of Need Office during the last thirty-six months of your tenure.

You ask for an opinion confirming your understanding of the law and clarifying your responsibilities under KRS Chapter 11A.

Please find enclosed for your information the brochure entitled, *Leaving State Government?* that will provide guidance on your post-employment activities.

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 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.

...

(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.

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The Commission has opined in previously issued advisory opinions that the agency/office head is considered to be directly involved in all matters within that agency/office. Thus, as Executive Director, you are considered to have been directly involved in all matters that were before the Office of Certificate of Need during your tenure.

However, because you state that you have returned to your former profession, you are not prohibited from accepting employment with, or compensation from, any person or business that did business with or was regulated by the Office of Certificate of Need during the last three years of your state tenure, provided, as you state, that you refrain from working on any matter for six months that either you or anyone within the Office of the Certificate of Need was directly involved the last three years.

Further, the Commission agrees with your interpretation that you immediately may represent persons or businesses before the Office of Certificate of Need so long as the representation does not involve any matter in which you or any employee within the Office of Certificate of Need was directly involved during the last three years.

The Commission also points out your responsibilities under KRS 11A.040(6) and (8) which prohibit you for six months from enjoying a part of a contract with the Office of Certificate of Need, and for one year from acting as or employing a lobbyist in matters in which you or anyone employed by the Office of Certificate of Need had direct involvement the last three years.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb