

Executive Branch Ethics Commission  
**ADVISORY OPINION 07-21**  
June 29, 2007

**RE:** Does contract or agreement as used in KRS Chapter 11A apply to an employment relationship?

**DECISION:** No.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own motion. This matter was reviewed at the June 29, 2007 meeting of the Commission and the following opinion is issued.

During the course of conducting training sessions and providing informal guidance to state employees, questions has been raised by employees regarding the propriety as to whether officers and elected officials subject to the Executive Branch Code of Ethics may be hired as employees (interim, part-time, full-time) by the state agency by which they were formerly employed immediately upon their departures from state employment.

KRS 11A.040(6) provides the following regarding a former officer's or elected official's relationship with the state agency by which he was formerly employed:

(6) A former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within six (6) months of termination of his employment, knowingly by himself or through any business in which he owns or controls an interest of at least five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he was employed. This provision shall not apply to a contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general public or that are made at public auction. This provision shall not apply to former officers of the Department of Public Advocacy whose continued representation of clients is necessary in order to prevent an adverse effect on the client.

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In reviewing this statutory provision, the Commission does not believe that the language prohibits a former officer or elected official within six months of his resignation or retirement from having “employment” (interim, part-time, full-time) with the state agency for which he formerly worked or headed. Although an employment relationship may be an agreement in one sense of the word, the Commission does not believe that an employment relationship with a state agency is what is intended by the use of the terms “contract” or “agreement” in the above provision.

Further, the Commission believes the language in KRS 11A.040(4), provided below, regarding a current employee’s relationship with the state agency by which he is currently employed is pertinent in answering this question.

(4) A public servant shall not knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

- (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
- (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
- (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or
- (d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction; or
- (e) Sales of craft items to a state park by interim state employees designated as craftspersons under KRS 148.257.

Current employees are prohibited also by KRS 11A.040(4) from holding or enjoying any contract or agreement with the state agency by which they are employed. Nonetheless, current employees do have an “employment arrangement” with their state agencies. Thus, the terms “contract” and “agreement” as used in both of these statutory provisions do not apply to an employment relationship with a state agency, and accordingly a former officer or elected official immediately upon resignation may be employed by the state agency by which he was formerly employed.

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The Commission also notes that retired employees must comply with statutory provisions related to retirement that may prohibit them for a certain period of time from returning to state employment if state retirement contributions are required.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Chair: John A. Webb