

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 92 – 8

December 11, 1992

RE: Ethics Commission Opinion Request

In response to your request dated November 13, 1992, the Executive Branch Ethics Commission ("the Commission") hereby issues the following advisory opinion at its November 23, 1992, meeting.

The relevant facts are as follows. You served as general counsel to a state agency for the past four years. The executive director of your agency advised you that your services as general counsel were no longer needed as of November 13, 1992.

You have been a licensed attorney since October, 1980. Before practicing law with state government, you were engaged in private practice. You advised the state agency on legal issues in various proceedings filed with it. The state agency regulates utilities that must file applications requesting prior approval for rate changes, construction and financing. Your responsibilities varied from to case to case, from directly advising the state agency on specific case proceedings to supervision of other attorneys who were primarily responsible.

You are concerned about the prohibitions contained in KRS 11A.040(6) and (8) as they may apply to your future employment as an attorney representing a client before the state agency. In particular, you have inquired whether (6) and (8) of KRS 11A.040 apply to former public servants who were dismissed without cause.

KRS 11A.040(8) states:

A former public servant shall not represent a person in a matter before a state agency in which the former public servant was directly involved, 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.

KRS 11A.040(6) provides:

No present or former public servant shall, within six (6) months of 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 the state in matters in which he was directly involved during 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, provided

that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved 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.

The Commission finds no distinction in KRS 11A.011 et seq. between public servants who are dismissed with or without cause. Regarding the retroactive reach of paragraphs (6) and (8) to "former" public servants, the Commission notes that the statute applies to conduct that occurs after the statute's effective date.

Regarding KRS 11A.040(8), the Commission concludes that you may immediately represent clients in legal matters before your former agency, provided that for a period of one year after leaving office such representation does not pertain to matters in which you were directly involved while you were a public servant. Based on the stated termination date of November 13, 1992, this partial prohibition extends through November 12, 1993.

Regarding KRS 11A.040(6), if you were directly involved in matters "xyz" while you were a public servant, then for six months following the end of your public service, you are barred from accepting compensation or employment from a person or business that transacts business with the state in matters xyz. This prohibition in paragraph (6) applies even if you agreed with your new employer that you would not work in matters xyz for the first six months. If the person or business does not transact business with the state in matters xyz, then you may accept employment immediately following your public service.

An exception to the above prohibition in KRS 11A.040(6) allows you to "return" to the same business, firm, occupation or profession in which you were involved prior to your public service, even if your employer transacts business with the state in matters xyz. However, for a period of six months following your public service, you would be required personally to refrain from working on any matter in which you were directly involved in state government, including xyz.