

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 93 – 1**

January 14, 1993

RE: Executive Branch Ethics Commission Opinion Request

In response to a request dated November 17, 1992, the Executive Branch Ethics Commission (the "Commission") issued the following advisory opinion at its January 14, 1993, meeting.

The relevant facts are as follows. The requestor is a former commissioner in the Cabinet for Human Resources. He intends to provide consulting services regarding health care issues to various health and/or medical related associations in Kentucky, such as the Kentucky Hospital Association, Kentucky Association of Health Care Facilities, and Kentucky Medical Association.

The requestor has made it clear that none of his client associations do business or have contracts with Kentucky although some of their individual members may. He emphasized that he would be representing his clients in technical matters pertaining to policies, not their individual members in connection with their own contracts with the Commonwealth. He acknowledged that many of his clients have registered lobbyists, but he emphasized that he would be engaging in no lobbying or lobbying-related activities on behalf of his clients.

The Executive Branch Code of Ethics places these restrictions on former state employees:

KRS 11A.040(6)

No present or former public servant shall, 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 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.

KRS 11A.040(7):

A former public servant shall not act as a lobbyist or lobbyist's principal 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(8):

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.

From the information provided, it does not appear that the requestor would be acting as a lobbyist or lobbyist's principal nor would he be representing his employers "before a state agency."

The requestor's situation as to KRS 11A.040(6) presents a new and difficult question for the Commission. The Commission assumes that the requestor would be consulting on matters in which he was directly involved while employed by the Cabinet for Human Resources.

The Commission believes that the intervening status of the associations is not sufficient to make his employment independent of the associations' members. The Commission concludes that the real interests which would be employing the requestor are the members of the associations and that, if members of the associations contract or do business with the state, his employment would not be permissible for six months after his termination (9/30/92).