

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93 -4

March 5, 1993

Your request dated February 5, 1993, has been reviewed by the Executive Branch Ethics Commission (the "Commission") at its March 5, 1993, meeting. The Commission issued the following advisory opinion.

The facts are as follows: Corporation A is a Kentucky corporation which is engaged, among other things, in the road and highway construction business. Corporation A desires to employ a retired state employee ("Employee"). Employee advises that at no time was employee involved in any bid evaluation or decision-making in regard to awarding bids for any particular highway project. Employee was involved in supervisory and compliance work to see that construction work did comply with the specifications pertinent to the project. Corporation A plans to utilize Employee in all aspects of the contracting and road construction business from initial evaluation of the project until completion.

KRS 11A.040(6) provides

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 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.

From the above facts, it appears that Employee was directly involved in almost all aspects of highway construction projects with the Department of Transportation. This appears to be the case despite the lack of direct involvement regarding the bid process. Because of such direct involvement as a public servant, for a period of six (6) months following retirement, Employee is barred from accepting compensation or employment from corporation A. As stated earlier, Corporation A transacts a wide range of highway construction projects and business with the Commonwealth. From the information provided, it appears that Employee would have been **directly** involved in one aspect or another of Corporation A's projects with the Commonwealth.

It is unclear whether Employee worked in the highway construction business prior to becoming a state employee. If so, Employee could begin working with Corporation A immediately, but Employee would be required to personally refrain from working on any matter

in which Employee was directly involved while a state government employee.

KRS 11A.040(8) provides:

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.

Employee would be prohibited from appearing before the Transportation Cabinet on behalf of Corporation A for a period of one year in any matter in which Employee was directly involved while a state government employee. The one year period begins to run from the date of retirement.