

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93-15

May 10, 1993

RE: Merit system employee asks whether he may legally bid and sell products to the Commonwealth of Kentucky and/or the agency where he is employed?

This letter is in response to your March 31, 1993, letter requesting an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 10, 1993 meeting of the Commission and the following opinion is issued.

The relevant facts are as follows. You are a merit system employee within the Cabinet for Human Resources. In addition, you own and operate a small corporation which sells computer products. You are asking whether or not KRS 11A.040(6) allows your company to legally bid and sell products to the Commonwealth of Kentucky as a whole and/or to the Cabinet for Human Resources.

In considering this request, the Commission took note of the statute you cited as well as additional provisions in KRS 11A.

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.

KRS 11A.040(4) provides

No public servant shall 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, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by any state agency. This provision shall not apply to a contract, purchase, or good faith negotiation made pursuant to

KRS Chapter 416 relating to eminent domain or to agreements which may directly or indirectly involve public funds disbursed through entitlement programs.

KRS 11A.010 (9)(j)

"Public servant" means:

...

(j) All employees in the executive branch including officers as defined in sub-section (7) of this section of this Act and merit employees;

The Commission concludes from the provisions of the Executive Branch Code of Ethics cited above that as a merit employee you are a public servant, and thus, legally prohibited from selling any products from a business which you own to any state agency or to the Commonwealth as a whole.