

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93 – 39

July 8, 1993

RE: State agency wishes to hire temporary employee who is a registered lobbyist

This letter is in response to your June 29, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 8, 1993, meeting of the commission and the following opinion is issued.

You state the relevant facts as follows: The state agency you represent wants to hire a temporary employee for 90 days who is a registered lobbyist. The individual will not be lobbying for the agency where employed and his official duties will be unrelated to his duties as a lobbyist. You are seeking an opinion on whether:

- 1) A temporary employee is a public servant as defined under KRS 11A;
- 2) KRS Chapter 11A prohibits a public servant from serving as a lobbyist; and
- 3) The prohibition against lobbying for one year in KRS 11A.040(7) is against all lobbying activity or just lobbying in matters in which the public servant was involved during state employment.

In considering this request, the Commission takes note of the following provisions in KRS Chapter 11A.

KRS 11A.010(9)(j) provides:

"Public servant means:

...

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

KRS 11A.005(1)(a) and (d) provide:

- (1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:
 - (a) A public servant be independent and impartial;

...

(d) The public has confidence in the integrity of its government and public servants.

KRS 11A.020(1)(b) provides:

(1) No public servant, by himself or through others, shall knowingly:

...

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

The Commission concludes from the provisions cited above that all employees in the executive branch, including temporary employees, are public servants under KRS Chapter 11A. As a public servant, an employee may not influence a public agency in derogation of the state at large. A lobbyist is employed to influence an agency decision or legislation which affects private interest. Therefore, the public servant registered as a lobbyist creates a conflict of interest in appearance if not in fact.

You refer to KRS 11A.040(7) which provides in pertinent part:

A former public servant shall not act as a lobbyist or lobbyist's principal for a period of one (1) year after

The provision in KRS 11A.040(7) does not specifically limit the prohibition on lobbying to those matters in which the public servant was directly involved. The Commission believes a former public servant is prohibited from all state-related lobbying activities for a period of one year following termination of employment.