

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 93-57**

November 22, 1993

RE: State employee wishes to accept controller position

This opinion is in response to your September 24, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 18, 1993, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Provider Branch in the Division of Audits within the Office of the Inspector General of the Cabinet for Human Resources as an auditor of cost reports. These cost reports are submitted to the Department of Medicaid Services (DMS) by Medicaid providers (i.e. nursing homes, primary care centers, and home health agencies) and are used by DMS to calculate rates to be paid to providers.

Recently, you completed an audit of the Jenkins Community Hospital Home Health Agency. During the audit the controller for the hospital terminated his position there. After completion of your field work, you indicated to the hospital that you might be interested in the vacant controller position. The position was subsequently offered to you. The controller position does involve general ledger duties for the Home Health Agency, but does not include working directly on the hospital's home health cost reports. An outside public accounting firm completes all cost reports and handles appeals of cost report audits. Prior to your state employment, you were an accountant for several companies and were responsible for all aspects of the accounting function for these companies. Although you did not have the title of "controller", you were in substance the controller for these companies.

You have been informed that your acceptance of this offer is a potential violation of the executive branch code of ethics. You believe that your situation meets the exception provided in KRS Chapter 11A.040(6) regarding returning to your former profession. You are seeking the Commission's opinion on this matter.

KRS 11A.040(6) provides:

(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.

The Commission believes you are returning to the same profession in which you were involved prior to your state employment.

However, based on the information now before us, we cannot approve your acceptance of the position of controller at Jenkins Community Hospital unless six months elapses after you leave your state job.

The Commission takes note that, as controller, your duties will include general ledger responsibilities for financial data of the Home Health Agency. Although an outside public accounting firm is responsible for the cost reports of the Home Health Agency, the Commission assumes the firm must obtain the financial data for the cost reports from the general ledger. Based on the information we have from you, we do not see how you, as hospital controller, could not be involved in the cost reports for the Home Health Agency.

We also wish to comment on your account of a September 14 conversation with a hospital home-office official. You apparently inquired about the controller's job in the course of a conversation which primarily concerned the audit of a cost report. The Commission believes this was unwise and cautions you to make a clear separation between your state work and your private-employment prospects as long as you hold your state job. We also realize we are aware of this situation because of your candor.