

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93 – 87

December 16, 1993

RE: May former state employee contract with and receive grants from the state?

This opinion is in response to your November 12, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 16, 1993, meeting of the Commission and the following opinion is issued.

The relevant facts are provided as follows. You resigned your position as archeologist with the Transportation Cabinet in October 1993. You have returned to the profession of archaeology where you worked prior to your state employment. You ask if your private consulting firm may be pre-qualified by the Transportation Cabinet for archaeological services for road projects with which you had no involvement while a state employee.

Additionally, your firm, as well as a firm you will serve as a consultant, have applied for federal grants administered by the Kentucky Heritage Council. The Heritage Council wishes to know if these requests may be considered.

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 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, because you have returned to your former profession, your business may be pre-qualified by the Transportation Cabinet for archaeological services for road projects as long as you were not involved in those projects during your state employment. You must refrain from working on any matter, in your new employment, in which you were directly involved during your state employment. However, you are not prohibited

from holding a personal service contract in your own name concerning matters in which you were directly involved during your tenure with the state.

The Heritage Council may consider your firm's application, as well as the application from a firm which you will serve as consultant, as long as the proposals involved do not involve matters in which you were involved during your state employment. Any entity which receives grants from the state is considered to be doing business with the state under KRS 11A.040(6).