

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 93 – 91**

December 16, 1993

RE: Questions concerning attorneys who hold personal service contracts.

This opinion is in response to your November 24, 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.

You ask the following questions:

- 1) *Is it unethical for an attorney who has a personal service contract with an agency to advertise and solicit clients whose claims relate to that state agency?*
- 2) *Is it unethical for an attorney who has a personal service contract with a state agency to advertise and solicit clients whose claims relate to that state agency using the personal service contract as a inducement to obtain clients?*

KRS 11A.010(7) and (9) provide:

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the State Board for Elementary and Secondary Education, the State Board for Adult and Technical Education, and any other management personnel with procurement authority;

...

- (9) "Public servant" means:
- (a) The Governor;
  - (b) The Lieutenant Governor;
  - (c) The Secretary of State;
  - (d) The Attorney General;
  - (e) The Treasurer;
  - (f) The Commissioner of Agriculture;
  - (g) The Superintendent of Public Instruction;

- (h) The Auditor of Public Accounts;
- (i) Each Railroad Commissioner; and
- (j) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

Attorneys who contract with an agency to provide services on a limited basis are not considered employees in the executive branch, and thus, are not public servants as defined in KRS Chapter 11A, the Executive Branch Code of Ethics. As such, they are not subject to the provisions of the Code. The situations referred to in your inquiry raise questions related to the legal profession's code of ethics. The Commission recommends you seek guidance on this matter from the Kentucky Bar Association.