

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 94 – 22

April 19, 1994

RE: May employee accept position with private contractor upon retirement?

DECISION: No, until new law takes effect July 15, 1994.

This opinion is in response to your April 1, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 19, 1994, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are an employee in the Materials Division of the Department of Highways within the Transportation Cabinet whose job responsibilities include testing asphalt, aggregates, concrete, etc., of outside contractors. You are considering retiring from your state position and seeking a similar position with an outside contractor. You ask if you may accept a position from a private contractor with whom you have been directly involved during your state tenure.

Currently, 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 takes note that the private contractors with whom you wish to seek employment are the same contractors whose products you test in your state position. As a public servant, for a period of six (6) months following your state employment, you may not accept employment with a private contractor which does business with your agency in an area in which you were directly involved during your state employment. An exception is allowed if you are returning to your former profession. Even if returning, however, you must refrain for six (6) months from working on any matters in which you were directly involved in your state position.

The above conclusion is based on the current provisions in KRS 11A.040(6). An amendment to this provision contained in House Bill 851 was recently passed by the General Assembly. Upon the effective date of this bill, July 15, 1994, the provisions in KRS 11A.040(6) apply only to public servants listed in KRS 11A.010(9)(a) to (i) and officers listed in KRS 11A.010(7) as defined below:

KRS 11A.010 provides:

- (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;

KRS 11A.010(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;

The Commission takes note that you are not a public servant listed in KRS 11A.010(a) to (i) or an officer as defined above. Therefore, upon the effective date of HB 851, you may immediately, upon retirement, accept employment with a private contractor.