

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 94-23

April 19, 1994

RE: May employee seek future employment with private company which does business with employee's state agency?

DECISION: Yes, unless employee, as part of state job, is directly involved in matters of private company.

This opinion is in response to your April 11, 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 a professional engineer in the Department of Highways within the Transportation Cabinet. You are a merit employee who is not considered an officer. In pursuing other employment opportunities outside of state government, you have been offered a position with an engineering firm which does business with your cabinet. In your state employment, you are not directly involved in any matter concerning this firm.

You request an opinion as to whether you may immediately, upon resignation, accept employment with the firm under the Executive Branch Code of Ethics.

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 takes note of your statement that in your state employment you have not been directly involved in any matter concerning the firm with which you seek employment. The Commission believes that if you have had no direct involvement in matters concerning this firm, you may, upon resignation, immediately accept employment with the firm. The Commission emphasizes, however, if you have been directly involved in matters concerning this firm, you must refrain for six (6) months, following resignation, from accepting employment with the firm.

The provision above, KRS 11A.040(6), has been amended by the passage of House Bill 851 by the 1994 General Assembly. Upon the effective date of this bill, July 15, 1994, the above provision will apply only to public servants listed in KRS 11A.010(9)(a) to (i) and officers as defined in KRS 11A.010(7). Thus, when effective, the six-month prohibition will no longer apply to most executive branch employees.