

**ADVISORY OPINION 94 - 54**

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October 13, 1994

RE:           1)     May agency head accept employment with financial institution upon resignation?  
              2)     Are the Department's guidelines in compliance with KRS Chapter 11A?  
              3)     May employees continue lending relationships when loans are transferred to state institutions?

DECISION:   1)     Yes, with limitations.  
              2)     Yes  
              3)     Yes, but employee should not examine or review institution.

This opinion is in response to your September 7, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 13, 1994, meeting of the Commission, and the following opinion is issued.

You provide the relevant facts as follows. The Department of Financial Institutions (the "Department") is the agency authorized to regulate state financial institutions such as banks, trust companies, credit unions, and loan companies. As the Commissioner of the Department, you have several issues you would like addressed by the Commission.

The first issue involves guidelines for the agency head's employment after leaving state employment. The Department of Financial Institutions has no jurisdiction over national financial institutions. Occasionally banks may change their charters from national to state or from state to national. In addition, holding companies may change branches of state chartered banks to branches of national banks. Banks which are changed from state to national are no longer regulated by the Department. Prior to state employment, the agency head was involved in the banking profession. You ask the following:

*Upon leaving the position of agency head, a position held since 1988, may the employee immediately accept employment with a bank holding company that once owned state banks but changed them to national charters or converted them to branches of one or more national banks during the tenure of the agency head? These former state banks either have a corporate identity as a national bank or they no longer have a separate corporate existence or identity having been merged into a bank or banks that have never been subject to the agency head's*

*May the former agency head immediately accept employment with a national bank that is owned by a bank holding company that owns other national banks, some of which were state banks during the agency head's tenure?*

*May the former agency head immediately accept employment with a bank holding company that owns a state bank along with national banks?*

*May the former agency head immediately accept employment with a national bank that is owned by a bank holding company that also owns state banks?*

Restrictions on the future employment of officers of the Commonwealth are provided below  
KRS 11A.040:

(6) No present or former officer or public servant listed in KRS 11A.010(9)(a) to (i) 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 the last 36 months of 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 during the last 36 months of his tenure 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.

(7) A former public servant shall not act as a lobbyist or lobbyist's principal for a period of one (1) year after the latter of:

- (a) The date of leaving office or termination of employment; or
- (b) The date the term of office expires to which the public servant was elected.

(8) A former public servant shall not represent a person in a matter before a state agency in which the former public servant was directly involved, for a period of one (1) year after the latter of:

- (a) The date of leaving office or termination of employment; or
- (b) The date the term of office expires to which the public servant was elected.

The Commission believes the agency head may return to the former profession of banking, but for six months must refrain from working on any matters in which the employee was involved as a state employee. As head of the Department, the employee is directly involved in all matters regarding the Department. Therefore, any future employment in a state financial institution or bank holding company which will include involvement with the Department is prohibited for six months. In addition, the former agency head may not represent a new employer before the Department for a period of one year upon resignation.

The agency head may immediately, upon resignation, accept employment with a bank holding company which owns banks which previously were state chartered but have been converted by the holding company to nationally chartered, as long as the agency head refrains for six months from working on any matter involving the Department, and refrains for one year from representing the holding company before the Department.

Similarly, the agency head may immediately, upon resignation, accept employment with a national bank that is owned by a holding company which owns state banks or other national banks that have been converted from state banks as long as the agency head refrains for six months from involvement with the Department, and for one year from representing the new employer before the Department.

Your second issue involves a review of the Department's interpretation of lending restrictions on examination staff for compliance with KRS Chapter 11A. The statutory guidelines on lending relationships between certain Department employees and state chartered banks are provided in KRS 287.440(3) and (4):

(3) Neither the commissioner, nor the deputy commissioner, nor any examiner or assistant examiner shall be indebted directly or indirectly either as borrower, indorser, surety or guarantor, to any bank or trust company under his supervision or subject to his examination, nor shall he be a director, officer or employee in such bank or trust company, nor engage or become interested in the sale of securities as business or in the negotiation

of loans for others.

(4) No person shall be assigned to examine the affairs of any bank or trust company in a county in which he holds stock in either a state or national bank or trust company.

The Department has extended this provision to apply also to other financial institutions under the regulation of the Department. The Department's interpretation of this provision allows a field examiner to designate in writing one state- chartered financial institution with which the examiner may have a lending relationship. Upon such designation, the examiner is precluded from participating in any supervision of the designated institution. However, the Department has limited regulatory contact, as required in KRS Chapter 294, with all institutions that are engaged in mortgage lending in Kentucky, regardless of whether the institution is state or nationally chartered. You ask:

*Is the Department's interpretation of KRS 287.440 and resulting guidelines consistent with and in compliance with the provisions of KRS Chapter 11A? Should similar restrictions be extended to all employees of the Department regardless of their level of involvement in the supervision of state chartered Financial institutions?*

The Commission finds no conflict between the provisions of KRS 287.440(3) and (4), department guidelines, and the Executive Branch Code of Ethics in KRS Chapter 11A. Each employee in the supervisory chain of command over examinations and other regulatory actions should be subject to this provision.

Your final issue involves lending relationships, which at the time of agreement did not violate ethical norms, but now have been questioned due to some change in the institution's corporate affiliation or in the ownership of the loan.

In order to avoid the appearance of impropriety, many employees of the Department have established banking and lending relationships with institutions which are not regulated by the Department, such as federally chartered banks. Due to changes in the financial services industry such as mergers, acquisitions, or charter conversions, some employee lending relationships (loans) have been shifted to institutions which are regulated by the Department. In addition, institutions may sell some of their loans in the secondary market. Therefore, a loan originally granted by a federally chartered institution may be acquired by a state regulated institution. Department policy would preclude the employee from participating in an examination of a state-chartered institution where the employee had a lending relationship. You ask:

*If an employee loan that was originally granted by an institution that was not chartered by the Department finds its way into an institution that is chartered by the Department due to a conversion of the institution or sale of that loan, must the employee incur the substantial additional expense necessary to refinance that loan with another institution that is not presently chartered by the Department? If the employee is permitted to continue the loan with the state chartered institution, may the employee incur additional debt with that institution since a lending relationship already exists? May new employees of the Department continue lending relationships with institutions that were established prior to joining the Department?*

The Commission believes if an employee is aware of any ownership change in any borrowing relationship the employee may have, the employee should so notify the Department, and the financial institution which owns his loan should not be subject to his examination or review, whether it be first line or ultimate authority. This policy is in compliance with KRS 287.440(3), and Department guidelines. If all financial institutions are subject to review by an employee, such as the Commissioner, the employee is not required to refinance the loan, but must abstain from official decisions concerning the financial institution as provided in KRS 11A.020(3) below:

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

Employees may continue borrowing relationships or incur additional debt with institutions with which they already have a borrowing relationship as long as that institution is not subject to the employee's examination or regulatory review.