

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 95-10**  
March 23, 1995

RE: Employment Options of Cabinet Secretary

This opinion is in response to your March 8, 1995, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 23, 1995, meeting of the Commission, and the following opinion is issued.

You presently serve as the Secretary of the Cabinet for Public Protection and Regulation. You request guidance regarding employment possibilities while serving in your present position and also upon leaving your position with state government. You state that "in the area of planning and professional services" you would be returning to your former profession. Specifically, you ask:

1. As Secretary of the Cabinet, are you permitted to participate in the Kentucky Transportation Cabinet's Disadvantaged Business Enterprise (DBA) Certification Program? You wish to submit an application for DBA Certification prior to leaving your position, and in anticipation of being able to provide professional services to the Transportation Cabinet upon termination of your state employment.
2. When you are no longer in your capacity as Secretary of the Public Protection and Regulation Cabinet, to what extent will you be restricted from working within one of the industries the Cabinet regulates (i.e., banking, coal mining, alcohol related, housing)?
3. Once you are no longer serving as the Secretary of the Public Protection and Regulation Cabinet, may you provide consulting, planning, and engineering related services to other state agencies which are not within the Public Protection and Regulation Cabinet?

KRS 11A.005(1)(c) and (d) provide:

**11A.005 Statement of public policy.**

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

....

(c) A public servant not use public office to obtain private benefits; and

(d) The public has confidence in the integrity of its government and public servants.

and KRS 11A.020(2) states:

**11A.020 Public servant prohibited from certain conduct -- Disclosure of personal or private interest.**

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

If, while you were a Cabinet Secretary, you were to apply for Disadvantaged Business Enterprise (DBA) certification and the certification were to be approved by a fellow executive branch officer, it would appear to the public that you had a special advantage. Thus, the Commission believes you should not apply for DBA certification prior to leaving the position of Cabinet Secretary.

Post-employment restrictions of former officers are detailed in the provisions of KRS 11A.040(6), (7) and (8) below:

(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 thirty-six (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

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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 thirty-six (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, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.

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.

As the head of a Cabinet, the Commission believes you are directly involved in all matters of the agencies within your Cabinet. If you are returning to your former profession, you may, upon termination from state employment, immediately accept employment with a person or business that does business with or is regulated by an agency within your Cabinet. However, for six months, you must refrain from working on matters which were before any agency of the Public Protection and Regulation Cabinet during the last thirty-six months of your tenure in state government.

Additionally, for a period of one year following termination from state employment, you may not act as or employ a lobbyist, nor represent anyone before a state agency in a matter in which you were directly involved as secretary of the Public Protection and Regulation Cabinet. Again, the Commission believes that, as the head of a Cabinet, you are involved in all matters of the agencies within that Cabinet.

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Upon termination from state employment, you may provide consulting, planning and engineering related services to state agencies not within the Public Protection and Regulation Cabinet as long as in your state employment you were not directly involved in the other agencies' matters which relate to the services you will provide.

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BY: Livingston Taylor, Chairman