

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 95-13
April 27, 1995

RE: Is former employee “representing” his new employer by taking part in on-site discussions with inspectors from his former state agency?

DECISION: Yes.

This opinion is in response to your March 31, 1995, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 27, 1995, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You resigned your position with state government as the construction branch manager of the Division of Abandoned Lands in the Natural Resources and Environmental Protection Cabinet (the "Division") on March 31, 1995. In your former job you were responsible for construction oversight and contract compliance for all reclamation contracts awarded and administered by the Finance and Administration Cabinet. Specifically, your duties were:

1. Supervision and management of all abandoned mine lands and bond forfeiture construction activities.
2. Construction oversight on all active construction projects.
3. Review of all inspection documents and correspondence related to construction projects.
4. Review of all contractor invoices for correctness and contract compliance.

5. Negotiation with contractors for any changes necessary to facilitate completion of constructions projects.

You have been offered employment as an engineer with a construction company (the "Company") which regularly bids on abandoned mine lands construction projects. If you accept this position, you would be involved in construction supervision of reclamation projects which would be monitored by the Division. This activity would involve regular contact with Division employees, and would require attendance at pre-bid meetings on upcoming projects and pre-construction meetings on projects awarded to the Company. It would also involve regular discussions with Division inspectors who would be visiting the job site during oversight inspections. You would not be an officer in the Company, nor would you be a partner or principal in the firm. You would not be in a position to make policy decisions for the Company nor would you have signature authority of any kind. You ask the Commission to determine if it would be a conflict for you to accept employment with the Company.

KRS 11A.040(6) states:

(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 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.

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Since you were not an officer in your former state job, you are not subject to the restrictions above and may accept employment with the Company immediately.

In addition, you would like to know if on-site discussions with Division inspectors during regular oversight inspections would constitute representing the Company before your former agency in matters in which you had been directly involved.

KRS 11A.040(8) states:

(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 inspection of abandoned-mines construction projects of this company is a matter in which you were directly involved in your former state job. We are assuming that the company had projects before the Division of Abandoned Lands during your employment there. "Representation" includes any activity where you would be the contact person for your new employer in dealing with a state agency. This would include discussions at the project site with inspectors from your old agency.

Thus, the Commission believes you are prohibited for one year from performing such duties for the proposed employer that you have described.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Livingston Taylor, Chairman