

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 96-7

February 6, 1996

RE: May a former employee's licensed family care home accept referrals from the agency for which she formerly worked?

DECISION: Yes.

This opinion is in response to your January 16, 1996 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 6, 1996 meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows: You are currently employed with Family Services/Guardianship Division, Department for Social Services, Cabinet for Human Resources ("Division"). You wish to resign your position and open a licensed family care home. In your new business, you wish to receive referrals for your home from the Division.

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.

KRS 11A.040(8) provides as follows:

(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.

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You have stated that you are not an "officer" under the Executive Branch Ethics Code; therefore, upon your resignation, you will not be subject to the provisions of KRS 11A.040(6). However, you are subject to 11A.040(8), under which you are prohibited from representing your licensed family care home in a matter in which you were directly involved as a state employee.

Since you have stated that you will be starting a new licensed family care home, it appears that you could not have been involved in any matters with respect to the home. See Advisory Opinion 93-43 (copy enclosed). Therefore, you may accept referrals from your former agency for your home, where the home had no matters in which you were directly involved before your Division during your employment there. See Advisory Opinion 94-69 (copy enclosed).

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Lynda Thomas, Vice Chair

Enclosure: AO 93-43
AO 94-69