

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 96-14**

March 19, 1996

RE: May employee accept position with corporation with which he was directly involved as part of his official position?

DECISION: Yes.

This opinion is in response to your February 28, 1995, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 19, 1995, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are employed as a branch manager for the Department of Mental Health /Mental Retardation (the "Department") and plan to retire effective July 31, 1996. You have been offered employment with Res-Care, Inc., a Kentucky corporation dedicated to serving persons who are mentally retarded. Res-Care, Inc. holds two contracts with the Department to manage and operate two state residential facilities.

Currently, you serve as a branch manager in the Program Support Branch, Division of Administration and Financial Management within the Department. You are not in a policy making position or an officer as defined in KRS 11A.010(7). You were not involved in the Department's awarding of contracts to Res-Care, Inc., nor do you authorize budget increases in its contract. All such decisions are made by the Commissioner of the Department. Your official responsibility involves administrative oversight of Res-Care, Inc. You verify and process Res-Care's monthly bills which it submits to the Department. In addition, you advise Res-Care, Inc. of Departmental decisions regarding Res-Care's requests for major maintenance projects or other issues requiring Departmental response.

Your position with Res-Care, Inc. will involve assisting in the expansion of the medicaid waiver programs in Kentucky. You ask if you may accept such employment immediately upon retirement.

KRS 11A.040(6), (7) and (8) provide:

(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

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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.

(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.

Because you are not an officer as defined by KRS Chapter 11A, and are not subject to KRS 11A.040(6), you are not prohibited from immediately accepting employment with Res-Care, Inc. However, as a public servant, you are subject to KRS 11A.040(7) and (8), and thus you must refrain, for one year, from acting as a lobbyist in any capacity or from representing Res-Care, Inc. before the state in administrative matters in which you were directly involved as an employee.

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BY: Lynda M. Thomas, Vice Chair