

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 96-15

March 19, 1996

RE: May Executive Director of Health Purchasing Alliance seek employment in the Insurance industry or with a voluntary health insurance purchasing cooperative if state position is terminated?

DECISION: Yes, within limitations.

This opinion is in response to your February 20, 1996, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 19, 1996, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. As Executive Director of the Kentucky Health Purchasing Alliance (the "Alliance"), you are considered an "officer" as defined by KRS 11A.010. Your duties include frequent, close, detailed interaction with a number of health insurance companies and health maintenance organizations which do business with the Alliance as accountable health plans.

Prior to your current employment, you worked in the insurance industry for 28 years. If your current position is eliminated, you may wish to return to your former profession. You understand that the provisions of KRS 11A.040(6) would allow you to return to the private insurance industry as long as you refrained from working on matters in which you were personally involved as Executive Director of the Alliance.

You request clarification regarding restrictions imposed by KRS Chapter 11A on your ability to seek employment if the Alliance is abolished by the 1996 General Assembly. Specifically, you ask whether it would be possible to work on Alliance-related matters if the Alliance is no longer in existence. You believe, because the Alliance will be abolished, that matters on which you work in your new position will not be considered Alliance-related matters, even if you are employed by an entity that formerly participated in the Alliance. In addition, if voluntary health insurance purchasing cooperatives are established, you believe you may accept employment with one of the cooperatives because no such organization is now doing business with the Alliance. Such a cooperative may receive some of its initial funding from participating insurers or health maintenance organizations with which the Alliance has done business. However, you would not directly receive "other economic benefit" from any entity with which you were directly involved as Executive Director of the Alliance. You seek the Commission's guidance on these matters.

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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 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.

In Advisory Opinion 92-8 (a copy of which is enclosed), issued by the Commission on December 11, 1992, the Commission found no distinction in KRS 11A et seq. between public servants who are dismissed with or without cause. Similarly, the Commission

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believes that if the Kentucky Health Purchasing Alliance is abolished and your position is terminated, you will be subject to the post-employment restrictions stated above. You may return to your former profession in the insurance industry; however, for six months, you may not work on any matter in which you were directly involved as Executive Director of the Alliance. Therefore, even if the Alliance is abolished, for six months, you should not work on any matters in your new position which came before the Alliance during your tenure.

In addition, for one year, you should not act as a lobbyist in any capacity or represent your new employer before the state in matters in which you were directly involved as Executive Director of the Alliance. For instance, you should not represent an employer before a successor state agency of your former office concerning a matter in which you were directly involved.

The Commission finds no prohibition against your accepting employment with a new health insurance purchasing cooperative with which you had no direct involvement in your official position as long as, for one year, you do not act as a lobbyist in any capacity, and you do not represent the cooperative before the state in any matters in which you were involved as Executive Director of the Alliance.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Lynda M. Thomas, Vice Chair

Enclosure: AO 92-8