

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 96-36
September 5, 1996

RE: May a former manager accept a position as sales representative with a company which markets products to state agencies?

DECISION: Yes, as long as the former manager will not be acting as an executive agency lobbyist.

This opinion is in response to your June 25, 1996, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 5, 1996, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. A former manager wishes to accept employment as a sales representative with a company which markets products to state agencies. The manager was not directly involved in the purchase of products from this company during his state tenure. In addition, the agency for which the manager worked has not directly purchased products from the company, although it does use products which the company markets. The company is a manufacturer's representative which markets products of several manufacturers to state agencies, but does not sell directly to state agencies. The company seeks customers for its manufacturers, but does not handle the actual sale of the product.

KRS 11A.040(6) and (7) 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.

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(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.

Because the former manager was not considered an officer during his state employment, he is not subject to the provisions in KRS 11A.040(6), and is free to accept employment with the company. However, as a former public servant, the manager is subject to the provisions contained in KRS 11A.040(7) above. Therefore, the former manager may not act as a legislative agent or executive agency lobbyist for one year upon termination of state employment, regardless as to whether or not the former manager was involved with the company during his employment.

Individuals who attempt to influence state officials concerning decisions of the officials involving state funds may be considered executive agency lobbyists. Consequently, persons who are involved in the marketing of goods and services to state government may be required to register as executive agency lobbyists. The former manager is prohibited from acting as a sales representative to market products to state agencies if such activity will require registration as an executive agency lobbyist.

Please find enclosed a copy of the executive agency lobbyist handbook which provides additional guidance in determining whether the former manager would need to register as an executive agency lobbyist for the company.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Ruth H. Baxter, Chair

Enclosure: *Executive Agency Lobbying Handbook*