

ADVISORY OPINION 97-8

February 4, 1997

RE: May former public servant accept post employment as Executive Vice-President of a workers' compensation program?

DECISION: Yes, within limitations.

This opinion is in response to your January 14, 1997 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 4, 1997 meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You were first employed with the state on February 16, 1989, with the Department of Insurance. On September 1, 1994, you accepted employment with the Department of Workers' Claims as a branch manager of self-insurance. On July 1, 1996, you returned to the Department of Insurance as a principal assistant to the Commissioner of Insurance. Prior to your employment with the state, you were employed in the insurance industry. You ask if, upon your resignation from state employment, you may accept employment as Executive Vice-President of a workers' compensation program sponsored by the Associated Industries of Kentucky (AIK).

You further state that in your current position as a principal assistant to the Commissioner of Insurance that you have no regulatory control or supervision over workers' compensation self-insurance programs such as operated by AIK. The AIK Workers' Compensation Program does not contract or do business with the state of Kentucky. Although the AIK Workers' Compensation Program is regulated by the Department of Workers' Claims, all supervision, decisions, and adoptions of administrative regulations for workers' compensation self-insurers are, by statute, vested with the Commissioner of the Department of Workers' Claims. You also state that you have never had procurement authority during your tenure with state government.

In addition, you state that you will not be acting as a lobbyist, nor representing your new employer in any matter for which you were directly involved while you were a public servant.

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.

Even though you did not have procurement authority during your tenure with state government, because you were a principal assistant, you were considered an "officer" as defined in KRS 11A.010(7). Thus, you are subject to the provisions stated in KRS 11A.040(6) above.

However, because you will be returning to your former profession in the insurance industry, the Commission believes that you may immediately accept employment as the Executive Vice President of a workers' compensation program sponsored by AIK, as long as, for six months you refrain from working on any matters in which you were directly involved during the last three years of your state employment. Such abstention pertains to any matters in which you were directly involved during the last three years, not just those matters during which time you were considered an "officer".

Therefore, in your position as Executive Vice-President you may assist members and service providers as long as such assistance does not involve matters (claims, claimants, specific issues) in which you were directly involved during the last three years of state employment, and does not require you to represent anyone, for one year, before any state agency concerning such matters.

In addition, you may not perform any lobbying activities for a period of one year after leaving your position with the Department of Insurance.