

ADVISORY OPINION 98-25

May 19, 1998

RE: May Deputy Commissioner accept employment with company which recently purchased company with which employee has direct involvement?

DECISION: Yes, within limitations.

This opinion is in response to your May 4, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 19, 1998, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You have served as the Deputy Commissioner for Adult Institutions with the Department of Corrections, Justice Cabinet since June of 1996. You tentatively plan to retire on May 31, 1998, and have been exploring various job opportunities available after your retirement.

On March 3, 1998, you had a job interview with a company that contracts for private prison operations. At that time, the company did not hold any contracts with the Commonwealth of Kentucky. Serious job opportunity discussions were held and a tentative offer was discussed for June 1, or July 1, 1998, with their company in Nashville, Tennessee.

On April 17, 1998 you learned that this company had purchased a private corrections company which holds a contract with the Department of Corrections for the operation of three minimum-security facilities. Neither your office nor the Department of Corrections participated in the negotiations relative to this transaction, nor had prior knowledge that this purchase would occur. However, during your tenure with the Department of Corrections you have been directly involved with the company that operates the three minimum-security prisons and which was purchased by the company with which you seek employment.

You ask for an opinion from the Commission regarding whether you may accept such employment immediately upon your 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 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.

The Commission believes that you may accept employment with the company with which you seek employment as long as you had no direct involvement, as a part of your official duty, with the company during the last thirty-six months of your state tenure. Although you had and may continue to have direct involvement with a company that was purchased by the company with which you seek employment, the Commission believes that you are not prohibited from seeking such employment.

Additionally, if you are returning to your former profession or occupation, you may accept employment with a company with which you had direct involvement; however for six months you may not work on any matters in which you were directly involved during the last three years of your state tenure.

If you do accept employment immediately upon your retirement, you are prohibited from lobbying for one year, and also are prohibited, for one year, from representing a person or business before the Department of Corrections in matters in which you had direct involvement. "Represent" has been defined to mean attending an agency proceeding, writing a letter or communicating with an employee of an agency on behalf of someone else.