

ADVISORY OPINION 98-43

December 17, 1998

RE: May principal assistant accept position as executive director of the Kentucky Disabilities Coalition?

DECISION: Yes, if not directly involved in matters of Kentucky Disabilities Coalition as part of official duty.

This opinion is in response to your November 4, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 17, 1998, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are currently employed as a principal assistant by the Kentucky Department for the Blind. You plan to retire from state government in February 1999 and have been offered an opportunity to become the executive director of the Kentucky Disabilities Coalition (KDC), a private, nonprofit agency. Since July of 1998 you have served on the Kentucky Developmental Disabilities Council (the "Council") as a representative for the Department for the Blind, and prior to that you served on the Council for two years as a member-at-large. The Council, created by executive order, serves as an advocate for individuals with developmental disabilities and is attached to the Office of the Commissioner of the Department of Mental Health and Mental Retardation Services. The KDC receives federal funding from the Council; however, as a member of the Council, you have not voted during 1998 on any issue regarding the KDC. You ask for an opinion as to whether you may accept the position as executive director for the KDC upon your retirement.

Regarding limitations on future employment upon leaving state government, KRS 11A.040 (7), (8) and (9) provide:

(7) No present or former officer or public servant listed in KRS 11A.010 (9)(a) to (h) 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, or is regulated by, 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, or for which he received, prior to his state employment, a professional degree or license, 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.

(8) A former public servant shall not act as a lobbyist or lobbyist's principal in matters in which he was directly involved during the last thirty-six (36) months of his tenure, 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.

(9) A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, 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.

From the information provided, it is difficult to determine whether you have had any direct involvement with the KDC as part of your official duty. Provided, during the last three years, you have had no direct involvement with the KDC as part of your official duty for the Department for the Blind, including your service on the Council as a representative for the Department, you may immediately accept employment as executive director of the KDC. However, if, during the last three years, you have had direct involvement with KDC as a part of your official duty, you must wait six months before accepting employment or compensation from the KDC unless you are returning to your former profession or occupation. If you are returning to a former profession or occupation, you may accept employment with the KDC, but for six months must not work on any matters in which you were directly involved as part of your official duty for the state.

Additionally, for one year you are prohibited from acting as or employing a lobbyist in matters in which you had direct involvement and also from representing your new employer before the state in matters in which you were directly involved.