

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-11
February 25, 2000

RE: May acting director obtain a personal service contract with former state agency immediately upon termination from employment?

DECISION: No, the acting director must wait six months.

This opinion is in response to your January 7, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 25, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. On October 21, 1999, an employee who is in a non-merit, ungraded classification of "special attorney" agreed to be acting director of the Victims' Advocacy Division as a result of the resignation of the director. The acting director was employed as part-time, less than 100 hours per month, prior to that date and remains in that classification, although the acting director has worked more than 100 hours for the months of August, September, November and December of 1999. The acting director does not wish to work full-time. You ask whether the Office of the Attorney General may retain the acting director under a personal service contract since the acting director has never been appointed director as defined in KRS 11A.010(7) or KRS 18A.

KRS 11A.010(7) provides:

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, the Council on Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection;

Additionally, KRS 11A.040(6) provides:

(6) No former officer or public servant listed in KRS 11A.010(9)(a) to (h) shall, within six (6) months of termination of his employment, knowingly by himself or through any business in which he owns or controls an interest of at least five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he was employed. This provision shall not apply to a contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general public or that are made at public auction.

Although the acting director has never been appointed as director of the division under Personnel rules, the Commission believes that the acting director is considered an officer under KRS 11A.010(7). Thus, the acting director is subject to the provisions of KRS 11A.040(6) above, and the acting director is required to wait six months upon termination of employment before obtaining a personal service contract with the Office of the Attorney General.

Additionally, the acting director has an affirmative duty to file a statement of financial disclosure pursuant to KRS 11A.050.