



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
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Executive Branch Ethics Commission
ADVISORY OPINION 16-04
April 19, 2016

RE:

1. Is a public health department considered a "person" or "business" as defined by the Executive Branch Code of Ethics?
2. May a public servant and officer working for the Cabinet for Health and Family Services immediately go to work for a local health department without violating the post-employment provisions applicable to officers?
3. If so, is the public servant required to abstain from matters involving the Cabinet for Health and Family Services for any amount of time after beginning employment with the local health department?

DECISION:

1. No
2. Yes
3. No

This opinion is issued in response to your April 6, 2016 request for an Advisory Opinion pursuant to KRS 11A.110(1) from the Executive Branch Ethics Commission (the "Commission") on your own behalf. This matter was reviewed at the April 19, 2016 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows: you currently serve as the Deputy Commissioner and Acting Director of the Division of Epidemiology & Health Planning, Department of Public Health, Cabinet for Health and Family Services (the "Cabinet"), and are considering leaving state service to take a position with a local health department. You indicate that you were assigned to work for a local health department before entering state service; you explain that you served as the medical director and interim director for health at the health department, but were actually employed by a public university. You are also a medical doctor. As such, you appear to be returning to your former profession whether you work as an administrator or as a doctor for a local health department.

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As part of your job duties for the Cabinet, you oversee the allocation of state funding to the local health departments. Local health departments are funded primarily by state and local county and/or city governments, but may also receive some federal funding as well as receive revenues from fees and services. Local health departments are closely regulated and monitored by the Cabinet pursuant to KRS Chapter 212, and the Cabinet determines the amounts that local governmental units are required to expend to support the health departments pursuant to 902 KAR 8:170. According to information provided by the Cabinet to the Commission, “the local health departments are funded entirely by government funds (federal, state and local). They are controlled by local governments and regulated/monitored by the Cabinet for Health and Family Services.”

KRS 11A.040 provides as it relates to post-employment provisions for all officers:

- (6) A former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, 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. This provision shall not apply to former officers of the Department of Public Advocacy whose continued representation of clients is necessary in order to prevent an adverse effect on the client.
- (7) A present or former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, 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)

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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.

(emphasis added). KRS 11A.010 provides definitions for “business” and “person.”

- (1) "Business" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted, whether or not for profit;

- (20) "Person" means an individual, proprietorship, firm, partnership, limited partnership, joint venture, joint stock company, syndicate, business or statutory trust, donative trust, estate, company, corporation, limited liability company, association, club, committee, organization, or group of persons acting in concert.

As a Deputy Commissioner and Division Director, you are considered an “officer” under the KRS 11A.010(7). Consequently, because you will be returning to your former profession, you are free to work wherever you choose, regardless of whether the health department does business with or is regulated by the Cabinet, which is allowable pursuant to KRS 11A.040(7). However, you are concerned with the post-employment provision that would require you to personally refrain from working on any matter in which you were directly involved during the last thirty-six (36) months of your tenure with the Cabinet because, in your proposed role for the local health department, your potential job duties would include working directly with the Cabinet on programs you managed as Deputy Commissioner and the Division Director of the Department.

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Nonetheless, based on the information provided, it would appear that local health departments can be viewed as part of the local governmental unit or political subdivision. Indeed, the Commission has previously opined, in the context of applying the outside employment and post-employment provisions, that political subdivisions or local governmental units are not considered “persons” or “businesses” within the context of the Executive Branch Code of Ethics. See Advisory Opinions 02-60 and 00-54. Therefore, the post-employment provisions do not apply to your proposed future employment with the local health department.

Accordingly, you would not be prohibited from going to work for a local health department immediately after terminating your state service. Furthermore, the Executive Branch Code of Ethics would not require you to abstain from participating on any matters relating to your work at the Cabinet once you begin working for the local health department.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: W. David Denton

Attachments: Advisory Opinion 02-60
Advisory Opinion 00-54