

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-6
February 25, 2000

RE: May engineer accept employment with contractor of the agency?

DECISION: Yes, however the engineer should not represent the contractor before his former state agency.

This opinion is in response to your January 5, 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. You are currently an Engineer-in-Training II with the Transportation Cabinet serving as a Resident Engineer for the Division of Construction in District 5. Your job is to administer and oversee highway construction contracts. You are responsible for making sure the contractor constructs the project according to the Transportation Cabinet's plans and specifications. You coordinate all activities on the project with the contractor and serve as the source of communication between the Transportation Cabinet and the contractor. The counties in which you normally work are Franklin and Shelby counties.

You ask whether you may terminate employment with the Transportation Cabinet and begin working for a contractor over whom you have administered a contract in Franklin and Shelby Counties either currently or in the past 38 months. Your duties with the contractor primarily would involve estimating, engineering work, project management, and corresponding with the Transportation Cabinet on matters concerning highway contracts. You primarily would be working in other districts in the state, but your work may involve District 5 in the future.

KRS 11A.040 (6) and (7) provide:

(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.

(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.

Because you are not an officer as defined by KRS Chapter 11A, you are not subject to the provisions in KRS 11A.040(6) and (7) above. Therefore, you may immediately accept employment with the contractor provided you do not use your official position to secure such employment. Such use of your official position would violate KRS 11A.020(1)(d) which provides:

(1) No public servant, by himself or through others, shall knowingly:

...

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Additionally, because your work for the Transportation Cabinet involves the direct regulation of the contractor with whom you seek employment, you should not discuss any future employment options with such contractor while at the same time you are involved in matters regarding such contractor. If you wish to seek employment with a particular contractor, you should abstain from all matters regarding the contractor and disclose your intention in writing pursuant to KRS 11A.020(3) below:

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

An employee not under your supervision should handle matters involving the contractor.

Furthermore, as a former public servant, you are subject to the provisions in KRS 11A.040(8) and (9) below. These provisions provide:

(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.

Therefore, for one year upon termination from state employment, you may not act as a lobbyist in matters you were directly involved. Additionally, for one year you may not represent the contractor before the Transportation Cabinet in matters concerning highway contracts because such representation would involve matters in which you were directly involved during your state employment. You are not prohibited from working on such matters for the contractor as long as you do not communicate with the Transportation Cabinet concerning such matters.