

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 00-19

April 28, 2000

RE: May former executive director accept employment with non-profit child care agency which had contracted with and was regulated by the former executive director's agency?

DECISION: No, unless the former executive director is returning to his former business or profession.

This opinion is in response to your March 3, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 28, 2000, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. The former executive director of the Office of Performance Enhancement, Cabinet for Families and Children (the "Cabinet"), has accepted employment with a non-profit child care agency that contracted with and was regulated by the Cabinet during the executive director's employment with the Cabinet. As part of his duties for his current employer, the former executive director has been engaged in contract negotiations with the Cabinet on behalf of his current employer.

As executive director, the employee had ultimate supervisory responsibility over all staff and functions of the office and either could or did exercise decision-making responsibility on matters relating to the Cabinet's contracts with non-profit child care agencies, including the agency with whom the former executive director is now employed. The former executive director's last day of employment with the Cabinet was October 29, 1999. You ask whether or not it is a violation of KRS 11A.040 (7) for the former executive director to accept employment with the non-profit child care agency within six (6) months from the date of termination.

KRS 11A.040 (7) provides:

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,

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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.

Also, KRS 11A.040 (9) provides:

- (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.

The Commission believes that, as head of the Office of Performance Enhancement, the former executive director was “directly involved” in all matters of the office. See Advisory Opinion 95-10. Furthermore, the Commission believes that a non-profit organization is a “person or business” under KRS 11A.040(7). See Advisory Opinion 96-35. Thus, the former executive director would be prohibited for a period of six months from accepting employment or compensation from a non-profit child care agency if the agency contracted with or was regulated by the Cabinet, and if the former executive director was directly involved as part of his official duty during the last 36 months of his tenure with the non-profit child care agency, unless the former executive director is returning to his former business or profession.

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If the former executive director is returning to his former business or profession, then he may accept employment with the non-profit child care agency, but the former executive director is prohibited for a period of six months from working on any matter in which he was directly involved during the last thirty-six months of his tenure. Furthermore, since it appears that, as part of his official duty, the former executive director was involved with the non-profit child care agency in negotiating matters, he should refrain for one year in representing the non-profit child care agency before the Cabinet in contract negotiations.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Bertie Oldham Salyer, M.A., A.M.E.

Enclosures: Advisory Opinion 95-10
Advisory Opinion 96-35

www.state.ky.us/agencies/ethics/ETHICS.HTM

May 9, 2000

Hon. William K. Moore, Jr.
General Counsel
Office of General Counsel
Cabinet for Families & Children
275 East Main Street, 4 West
Frankfort, KY 40601

Reference: 042800.7

Dear Mr. Moore:

At its April 28, 2000, meeting, the Executive Branch Ethics Commission took up your request, dated March 3, 2000, in which you ask whether a former executive director may accept employment with a non-profit child care agency which had contracted with and was regulated by the former executive director's agency.

The enclosed Advisory Opinion 00 – 19 is issued in response to your inquiry.

Sincerely,

Jill LeMaster, Executive Director

Enclosure: Advisory Opinion 00 - 19