

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-34
June 23, 2000

RE: Is Director of Intergovernmental Relations considered an officer?

DECISION: No.

This opinion is in response to your June 8, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 23, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Director of Intergovernmental Relations within the Office of the Governor recently left his employment with state government and plans to form a lobbying firm that intends to engage in executive agency lobbying within the meaning of KRS 11A.201(9). In his state government position, the Director served as the Governor's liaison with federal agencies and governors of other states. He had no managerial or decision-making authority, and only two employees reported to him. The official job classification on his personnel document (P-1) was "administrative assistant".

You are aware of several post-employment restrictions that apply to former state employees. Specifically, you are aware that KRS 11A.040(6) and (7) apply only to elected officials within the executive branch of state government and officers as defined in KRS 11A.010(7) below:

(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;

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You do not believe that the Director of Intergovernmental Relations was an officer, because he was not the director of a division and he had no managerial responsibility. You ask for an opinion as to whether such a position is considered an officer.

Although the employee was titled a Director of Intergovernmental Relations within the Office of the Governor, because his personnel position was listed as an administrative assistant, and because his actual duties did not rise to the level of major management, the Commission does not believe that the Director was an officer as defined in KRS 11A.010(7) above. Therefore, he is not subject to the post-employment provisions in KRS 11A.040(6) and (7).

However, the Director is subject to the provisions in KRS 11A.040(8) and (9) as provided below, and therefore, for one year following his termination of employment, he should not register as an executive agency lobbyist or legislative agent to lobby issues involving matters in which he was directly involved during the last three years of his tenure in state government. Additionally, for one year he should not represent any persons or businesses before the state in any matters in which he was directly involved during his last three years of employment.

KRS 11A.040(8) and (9) 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.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Bertie Oldham Salyer, M.A., A.M.E.