

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-37
August 18 2000

RE: Must former employees working under personal service contracts wait more than one year from their retirement dates before they lobby or represent individuals before their former state agencies?

DECISION: No, unless they are considered officers under the personal service contracts.

This opinion is in response to your June 20, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 18, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Cabinet for Health Services (the "Cabinet") anticipates that a number of valued employees will retire from state service in the next few months. Some of these employees, who are not "officers", may be asked to assist the Cabinet under personal service contracts in the administration of agency programs. None of the former employees engaged under personal service contracts will serve in the capacity of manager or director.

Following the conclusion of their work under personal service contracts for the Cabinet, these individuals may wish to be employed by other entities, and their duties may involve lobbying or representing their new employers before the Cabinet. You ask, pursuant to KRS 11A.040(9), whether these individuals are required to wait one year from their retirement dates or one year from the expiration of their personal service contracts before they may represent someone before the Cabinet.

KRS 11A.010(7) defines officer as:

(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,

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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;

Individuals who are not elected officials or officers as defined in KRS 11A.010(7) are not prohibited from contracting with their former state agencies immediately upon their retirement from state service. However, KRS 11A.040(6) prohibits individuals who are considered officers or elected officials, for six months, from contracting with their former state agencies, upon their retirement. Thus, provided an individual is not an officer, he may obtain a personal service contract with the Cabinet upon his retirement from state service, but he should not use his official position while an employee to give himself an advantage over others in securing a personal service contract. Such use of his 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, 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.

The Commission believes that former employees working under personal service contracts, who are not considered officers under those contracts as defined above, are required to wait one year from their retirement date before they may lobby or represent a person or business before the state in matters in which they were directly involved. From the information that you have provided, it does not appear that the former employees will be fulfilling positions under personal service contracts that would be considered officers as defined above. Thus, it appears that such former employees should wait one year from their retirement date before they lobby or represent individuals or businesses before the state in matters in which they were directly involved during the last three years of their state tenure.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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