

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-54
September 22, 2000

AMENDING ADVISORY OPINION 93-11

RE: May Commissioner of the Department for Local Government accept employment as executive director of KACo?

DECISION: Yes.

This opinion is in response to your September 8, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 22, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. Governor Paul Patton appointed you as the Commissioner of the Department of Local Government (the "Department") on December 13, 1995. Prior to that appointment, you served as the county judge executive of Franklin County. While serving as the county judge executive of Franklin County, you were a member of the Kentucky Association of Counties ("KACo") and held various offices in the organization including president and board member. You have recently received an offer by KACo to serve as its executive director. You ask whether you may accept the offer of employment as executive director of KACo immediately upon your termination of employment as Commissioner of the Department of Local Government, and what restrictions would be imposed on that employment.

The Department has oversight responsibilities, as detailed below, over the affairs of counties that may be members of KACo, but it does not have any direct regulatory authority over KACo or any contracts or agreements with KACo that would establish a business relationship. The Department, through the state local finance officer, approves the budgets of the counties, many of which are members of KACo. Similarly, the Department, through the state local debt officer, approves certain financial transactions for counties, such as leases and bond issues involving KACo's Counties Leasing Trust program. The statutes define the state local finance officer and the state local debt officer as the Commissioner of the Department or his designated agent. You state that you have designated other employees of the Department's staff to fulfill these responsibilities. Another responsibility of the Department is to administer grant programs

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that provide funds to counties for a wide range of projects. Finally, the Department, in partnership with KACo, approves and certifies training provided to county officials by other entities, including KACo, in accordance with KRS 64.5275.

You do not believe that KACo is a person or business that does business with or is regulated by the state in matters in which you were directly involved during the last thirty-six months of your tenure with the Department. Thus, you believe that you may accept the position as KACo's executive director immediately upon your termination of employment with the Department. In the alternative, if the Commission determines that KACo does business with or is regulated by the state in such matters, you believe that, if you were to accept the position with KACo, you would be returning to the same profession in that you were involved prior to your employment by the Department

KRS 11A.040(7), (8) and (9) provide:

(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.

(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:

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- (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.

In several previous advisory opinions (copies of which are enclosed), the Commission has opined that an agency head is directly involved in all matters of the agency. Thus, as Commissioner of the Department, the Commission believes that you are directly involved in all matters of the Department, including the regulation of counties. However, the Commission believes that you were not involved in the regulation of KACo, the organization that lobbies on behalf of counties. Consequently, the Commission believes that you may accept employment with KACo immediately upon your resignation from the Department.

For a period of one-year following your resignation, you may not act as a lobbyist or represent KACo before the state in matters in which you were directly involved during the last three years of your employment. The Commission does not believe that a political subdivision, such as a county, is a person or business as defined in KRS Chapter 11A. Thus, the Commission reverses its interpretation KRS 11A.040(9) (in 1993 codified as 11A.040(8)) issued in Advisory Opinion 93-11 (a copy of which is enclosed) as it applies to a local governmental unit. Accordingly, although you would be prohibited for one year from representing KACo before the state in matters in which you were directly involved, you would not be prohibited from representing an individual county before the state in matters in which you had had previously involvement.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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

Enclosures: Advisory Opinion 93-11
Advisory Opinion 93-33
Advisory Opinion 94-54
Advisory Opinion 95-10