

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 00-57

November 3, 2000

RE: 1) May former General Counsel accept employment as Attorney III?
 2) Upon resignation from Attorney III position, may former General Counsel contract with former Department?

DECISION: 1) Yes.
 2) Yes.

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

You state the relevant facts as follows. The former General Counsel of the Department of Insurance (the "Department") resigned her position on September 15, 2000. Prior to her employment with the Department of Insurance, she was the Executive Director of the Kentucky Health Purchasing Alliance (the "KHPA"). The KHPA has numerous lawsuits pending against it, although it no longer exists as a state agency. The former General Counsel's expertise with the KHPA's operations in coordinating the Attorney General's effort to defend against these lawsuits is critical to the Commonwealth.

The Executive Director of the Commission has conveyed to you that because the former General Counsel was an officer during her employment with the Department, she may not contract directly with the Department for six months following her resignation, pursuant to KRS 11A.040(6). You ask whether the former General Counsel may accept a part-time, interim, Attorney III position with the Department. You anticipate that she will work 5-20 hours per month in this position. Additionally, you ask whether, upon her resignation from that position, she may contract with the Department on March 16, 2001, six months after her resignation as a General Counsel, since an Attorney III is not an officer position.

KRS 11A.040(6) provides:

(6) No former officer or public servant listed in KRS 11A.010(9)(a) to (h) shall, within six (6) months of termination of

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 00-57

November 3, 2000

Page Two

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.

The Commission finds no provisions in the code of ethics that prohibit the former General Counsel from employment with the Department as an Attorney III within six-months of her resignation. Additionally, the Commission believes that if a former officer accepts employment in a non-officer position with the state agency for which he formerly worked, he only would be required to wait six months from the date he resigned from the officer position before he could contract with his former state agency. He would not be required to wait an additional six months from the date he resigns his non-officer position. The Commission believes that the law above prohibits an employee from contracting with his former state agency within six months of his termination of his officer position. Therefore, the former General Counsel may contract with the Department on March 16, 2001, even if she is employed during the interim as an Attorney III.

However, the Commission also believes that if the former General Counsel, as an Attorney III, will be performing the same duties that she performed as the General Counsel, in substance she is still an officer, and she should wait six months after her resignation as an Attorney III before contracting with the Department.

The former General Counsel is not prohibited from contracting with another state agency, such as the Office of the Attorney General, immediately upon her resignation from employment.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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

