

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 01-11**  
March 30, 2001

RE: Reconsideration of Advisory Opinion 99-41

DECISION: Reversal of Decision

This opinion is in response to your March 7, 2001, request for a reconsideration of Advisory Opinion 99-41 by the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 30, 2001, meeting of the Commission and the following opinion is issued.

You provide the additional relevant facts as follows. In Advisory Opinion 99-41, issued by the Commission on October 22, 1999, the Commission concluded that the departments within the Cabinet for Workforce Development Cabinet (the "Cabinet") were all part of one state agency as defined in the Executive Branch Code of Ethics. The Cabinet has since then decentralized by delegating the function of appointing authority to the commissioners of each department. This action has been filed with the Personnel Cabinet. Thus, each department is now responsible for its own personnel and payroll, and each department commissioner is the appointing authority for the respective department. You believe that this now makes each department a separate state agency as defined by KRS 11A.010(1) which provides:

(10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his appointing authority is employed, unless his agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department;

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The Commission agrees that, pursuant to the definition above, an employee is employed by the "state agency" by which his appointing authority is employed. Thus, an employee of a particular department of the Cabinet would be considered to be employed by that department, rather than by the Cabinet. The departments of the Cabinet now would be considered separate state agencies for purposes of enforcing the Executive Branch Code of Ethics. Therefore, based on the changes in the functions of the appointing authority of the Cabinet, the Commission reverses its decision in Advisory Opinion 99-41.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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