

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 02-20**  
March 22, 2002

RE: May a state employee provide surveying services for a property owner who is a principal in a company whose work the employee has reviewed?

DECISION: Yes, but should wait a reasonable period of time before doing so.

This opinion is in response to your March 7, 2002, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 22, 2002, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Transportation Cabinet, District 11, (the "Cabinet"), as a Resident Engineer. You hold licenses as a Professional Engineer and Professional Land Surveyor. On occasion, you have done private land surveying work for individuals who have no business activities for which you are responsible as a part of your official duty for the Cabinet. You have now been requested to perform private land survey work by a property owner who is a principal of a company whose work you have overseen on past road construction projects. You do not believe that there will be any work let by the Cabinet in the near future in your area of responsibility on which the company would bid. In your employment with the Cabinet you have nothing to do with the bidding process. You ask the Commission's opinion as to whether you may accept such private work.

In previous Advisory Opinions, the Commission held that employees could provide services for vendors of their agencies, provided the employees have no involvement, as part of their official duties, in matters relating to the firms for which they seek to provide services. The Commission also stated that the employees should not be involved in any matters relating to businesses that might be in competition with the firms they seek as clients, or with the employee's private businesses. See Advisory Opinions 98-5, 98-32, and 99-31.

Similarly, the Commission believes that you are not prohibited from providing surveying services for the property owner if you currently have no involvement, as part of your official duty, in matters regarding the company of which the property owner is a principal. However, in Advisory Opinion 98-31 (a copy of which is enclosed), the Commission encouraged an agency to develop internal policies regarding abstention by employees in matters of former employers for limited periods of time as determined reasonable by the agency. Accordingly, in order to uphold public confidence in the independence of government, the Commission believes that the Transportation Cabinet should develop internal policies that would require employees to abstain, for a limited period of time, from any matters involving any company for which they have privately provided a service. Additionally, the Commission believes that similar internal policies should be established regarding an amount of time that an employee should wait before providing a service privately for a company with which the employee has had direct involvement

as a part of his official duty. The Cabinet should consider the following factors set forth in KRS 11A.030 provided below:

11A.030 Considerations in determination to abstain from action on official decision -- Advisory opinion.

In determining whether to abstain from action on an official decision because of a possible conflict of interest, a public servant should consider the following guidelines:

- (1) Whether a substantial threat to his independence of judgment has been created by his personal or private interest;
- (2) The effect of his participation on public confidence in the integrity of the executive branch;
- (3) Whether his participation is likely to have any significant effect on the disposition of the matter;
- (4) The need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the executive branch; or
- (5) Whether the official decision will affect him in a manner differently from the public or will affect him as a member of a business, profession, occupation, or group to no greater extent generally than other members of such business, profession, occupation, or group. A public servant may request an advisory opinion from the Executive Branch Ethics Commission in accordance with the commission's rules of procedure.

At a minimum, the Commission recommends that you wait six months following your involvement with the company as a part of your official duty before providing private services to the company or any of its principals. Additionally, if you provide the surveying services for the property owner, the Commission would recommend that you abstain, for a minimum of six months following the completion of your service, from any involvement as a part of your official duty in matters pertaining to the company of which the property owner is a principal. Such abstention should be made in writing pursuant to KRS 11A.020(3):

- (3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

Furthermore, if you will be an employee of the property owner or the company that is a vendor of the Cabinet, you should seek approval of such outside employment from your appointing authority pursuant to KRS 11A.040(10). The Cabinet must ensure that you are not directly involved in decisions or recommendations affecting the company. If not, based on the facts expressed in your request, it does not appear that you would be prohibited from accepting such employment within the limitations expressed above

Enclosures: Advisory Opinion 98-5  
Advisory Opinion 98-32  
Advisory Opinion 99-31  
Advisory Opinion 98-31