

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-54

November 22, 2002

RE: May former employee accept employment with subcontractor of transportation service company?

DECISION: Yes, but for one year should not lobby or represent the company in matters in which the former employee was directly involved.

This opinion is in response to your September 16 and October 23, 2002, requests for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the November 22, 2002, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. On October 15, 2002, you resigned your position with the Cabinet for Health Services, Department for Medicaid Services, Division of Managed Care (the "Department"), as a Medicaid Specialist III and the Human Services Transportation Delivery ("HSTD") Program Coordinator. You accepted a position on October 16, 2002 as the Chief Executive Officer (CEO) of Mainstream, Inc. ("Mainstream"), located in Clarksville, Indiana. Mainstream is owned by an individual that also owns Coordinated Transit Group ("CTG") in Jefferson County, a transportation services organization that holds a contract with the Transportation Cabinet to provide exclusive wheelchair and taxi service to Medicaid recipients in the five counties of Region 6.

The Department contracts with the Transportation Cabinet to oversee the daily operations aspects of the HSTD program. The Transportation Cabinet exclusively administers all contracts for the HSTD program, and awards such contracts through a public bidding process. The Department has oversight authority to review and recommend policy and program changes, but does not participate in the bidding process. You state that in your position with the Department, you interacted with medical transportation providers as a part of your official duty.

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Originally, you were seeking employment as CEO with CTG, but upon further reflection, decided that such a position would present a possible conflict for you. Thus, you accepted the position with Mainstream instead. Mainstream is a subcontractor of CTG and is located in the same building as CTG. You are seeking guidance as to what possible restrictions may be placed on your ability to perform functions in the private sector as it relates to state government interactions.

Because it does not appear that you were an officer as defined in KRS 11A.010(7), you are not subject to the post-employment restrictions in KRS 11A.040(6) and (7) that apply to officers only. However, you are subject to the post-employment restrictions in KRS 11A.040(8) and (9) which provide the following:

(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.

Thus, for one year following your employment, you should not represent Mainstream or any other person or business before the state (any state agency) in matters in which you were directly involved during the last three years of your employment. "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else. Thus, for one year, you should not communicate on behalf of Mainstream or CTG with any state agency concerning transportation service matters in which you were directly involved the last three years of your employment.

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Furthermore, for one year, you should not act as or employ a lobbyist in matters in which you had direct involvement the last three years of your state employment.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.