

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-60

December 13, 2002

RE: Are state colleges, state universities, and political subdivisions considered "persons" or "businesses"?

Decision: No.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own motion. This matter was reviewed at the December 13, 2002 meeting of the Commission and the following opinion is issued.

The Commission has recently reviewed its interpretation of the definition of "person or business" as it is used in the provisions contained in KRS 11A pertaining to outside employment and post-employment.

"Person", although not defined in KRS 11A.010, is defined in the executive agency lobbying provisions in KRS 11A.201(13) as follows:

"Person" means an individual, proprietorship, firm, partnership, limited liability partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, limited liability corporation, association, club, committee, organization, or group of persons acting in concert;

The Commission believes that this definition should be applied to the other provisions of Chapter 11A, as well. Additionally, KRS 11A.010(1) defines "business" as follows:

"Business" means any corporation, limited liability corporation, partnership, limited liability partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit.

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The Commission initially broached the interpretation of person or business in Advisory Opinion 00-54 in which it stated that it did not believe that a political subdivision was a person or business. The Commission goes further and states that based on a review of these definitions, it does not appear to the Commission that state colleges and universities, or political subdivisions, are included as “persons” or “businesses.” Thus, when a former employee is accepts employment with a state college or university, or a political subdivision, or when he represents a state college or university, or a political subdivision, the provisions in KRS 11A.040 (7) and (9) stated below would not apply.

Additionally, if an employee seeks outside employment with a political subdivision, or a state college or university, the provision in KRS 11A.040(10) provided below would not apply (also excluded by KRS 11A.120). However, an employee would still have to ascertain that no conflict exists that would prohibit such outside employment.

(7) A present or former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, 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.

(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:

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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.

(10) Without the approval of his appointing authority, a public servant shall not accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.

(a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.

(b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.

(c) The appointing authority, if applicable, shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.

This interpretation reverses any previous advisory opinions issued by the Commission stating that an employee is subject to KRS 11A.040 (7), (9), or (10) when the entity with which the employee or former employee is seeking employment or is representing is a state college or university, or a political subdivision.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.