

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-45

December 18, 2003

RE: Do post-employment provisions apply if employee transfers to another executive branch agency?

DECISION: No.

This opinion is issued in response to your October 24, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 18, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. Advisory Opinion 03-40 was issued by the Commission in response to your previous request. In that advisory opinion, the Commission advised that a violation of KRS Chapter 11A would exist for an employee if a law firm owned in part by the employee's spouse contracted with the employee's agency. You have a follow-up question regarding that advisory opinion. You ask, if the employee leaves the Cabinet for Health Services (the "Cabinet"), but remains in the employ of the Commonwealth, does the Commission agree that the provisions in KRS 11A pertaining to post-employment would not apply, and thus the Cabinet could continue to contract for legal services with the law firm without exposing the employee to any potential ethics violations. You also ask, if the employee leaves the Cabinet for a job outside state government, how would the post employment restrictions impact the contractual relationship between the Cabinet and the law firm.

In Advisory Opinion 98-5, the Commission stated that an employee who transferred from his employment with the Transportation Cabinet to employment with the Finance and Administration Cabinet was not subject to the "post-employment" provisions in KRS 11A.040 because he was still a public servant.

Similarly, the Commission believes that if the employee who is the subject in Advisory Opinion 03-40 transfers to another position within the executive branch of state government, he will not be subject to the post-employment provisions in KRS 11A.040(6)-(9). Therefore, the

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Commission agrees that if the employee is no longer employed by the Cabinet but still remains a public servant, the law firm owned in part by the employee's spouse may contract with the Cabinet without a violation by the employee, provided the employee complies with the Model Procurement Code in KRS 45A.340(5) which provides:

(5) No officer or employee of an agency or appointee shall knowingly himself or by his partners or through any corporation which he controls or in which he owns or controls more than ten percent (10%) of the stock, or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, sale, or purchase of the value of twenty-five dollars (\$25) or more, made, entered into, awarded or granted by any agency, unless said contract, agreement, sale or purchase was made or let after public notice and competitive bidding.

Regarding your second question, KRS 11A.040(6), in part, provides the following:

(6) A former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within six (6) months of termination of 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.

If the law firm were to contract with the Cabinet within six months of the employee's resignation from the Cabinet, the former employee may be in violation to the law due to his benefiting from his spouse's ownership interest in the firm.

The Commission also warns the Cabinet that any participation by the employee, as part of his official duty, in matters regarding the law firm either now, in the future, or in the past during any dating relationship prior to the employee's marriage, would be a conflict of interest

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between the employee's private interest and the employee's duty in the public interest, pursuant to KRS 11A.020(1)(a) below:

(1) No public servant, by himself or through others, shall knowingly:

(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.