

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 05-8

February 18, 2005

RE: May Executive Director of the Bluegrass State Skills Corporation accept employment as Executive Director of the Kentucky Association for Economic Development?

DECISION: Yes, within limitations.

This opinion is issued in response to your February 3, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 18, 2005 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You serve as the Executive Director of the Bluegrass State Skills Corporation ("BSSC"), an independent, de jure corporation of the Commonwealth. BSSC is attached to the Economic Development Cabinet (the "Cabinet") for administrative purposes, under the oversight of the Commissioner of the Department of Financial Incentives. The board of directors for BSSC sets program guidelines and approves BSSC projects.

The Kentucky Association for Economic Development ("Association") (formerly Kentucky Industrial Development Council, Inc.) is a non-profit, private professional trade organization of state, regional and local economic developers. It operates through membership dues and donations from businesses and industries. The Association employs an Executive Director and is now attempting to fill that position. You recently applied for the position in order to meet the required time frame to be considered. You have read the statutes in KRS Chapter 11A applicable to post-employment activity, as well as Advisory Opinions 00-54 and 02-50. You believe the law and opinions answer your question, but to avoid any possible misinterpretation you request an advisory opinion from the Commission. You have sought legal advice, and one issue that is of concern is whether the payment by the Cabinet for the

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membership fee establishes a “business relationship” between the Association and the Cabinet, such that the Cabinet would be considered “doing business with” the Association. You state that you are not the “agency head” that made the decision to pay the membership fee to the Association, and no services are rendered by the Association for the payment.

You ask:

May I be hired as the Executive Director of the Kentucky Association for Economic Development without waiting the six months imposed by paragraph (7)? The only “business relationship” between the Association and the Cabinet for Economic Development is the payment by the Cabinet of a fee for some thirty members of the Cabinet including me. The fee is not paid by BSSC, there was no decision by me to be included in that number, and there was no decision by me or my board for BSSC to be included. The fee paid for membership in not for any services rendered to the Cabinet, nor does the Cabinet in any respect regulate the Association. However, the Cabinet, not BSSC, from time to time in the past has participated in funding local community assessments for economic opportunity.

Please find enclosed the brochure entitled, *Leaving State Government?* , provided for your information.

KRS 11A.040(7) provides:

(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. (Emphasis added)

“Does business with” is defined in KRS 11A.010(14) as:

(14) "Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;

Although it appears that the Cabinet does have a business relationship with the Association, in that the Cabinet makes the decision whether to join the Association, and payment is made by the state in return for receiving the services of membership (Advisory Opinion 02-50), it does not appear that you had direct involvement with the Association in that business relationship.

Whereas you head the BSSC and are directly involved in all matters of the BSSC, you are not directly involved in all matters of the Cabinet. From the information provided to the Commission, it does not appear that you were involved in the decision to join the association and authorize, or recommend, payment thereof.

Although you do not state whether you worked or had any involvement with the Association as part of your official duty, the Commission believes that, provided that involvement was not related to “doing business with the state,” and did not involve discretionary decisions or recommendations by you concerning the Association, it would not prohibit you from accepting employment with the Association.

Thus, provided you have had no direct involvement in any other matters concerning the Association that involved doing business with the state, you are not prohibited from accepting employment with the Association immediately upon your resignation or retirement from state employment.

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The Commission also points out that you are subject to the provisions provided in KRS 11A.040(8) and (9) which prohibit you, for one year following your resignation or retirement from state employment, from acting as a lobbyist or employing a lobbyist, or representing a person or business before the state, in matters in which you were directly involved during the last three years of your state tenure.

Also, see Advisory Opinions 97-8 and 96-35 included for your review.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: James S. Willhite

Enclosures: Advisory Opinion 97-8
Advisory Opinion 96-35