

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 06-23

August 25, 2006

RE: May chief of staff accept employment with ConnectKentucky?

DECISION: Yes.

This opinion is issued in response to your August 15, 2006 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 25, 2006 meeting of the Commission and the following opinion is issued.

You provide the following relevant facts as follows. You currently serve as the Chief of Staff for the Commerce Cabinet (the "Cabinet"). You have held this position since July 2004. Prior to that, you served as the legislative director for the Governor's Office. As Chief of Staff you have been associated with each agency within the Cabinet. Your association with the majority of agencies within the Cabinet has been marginal, limited to knowledge of matters on which the agencies may be working, but not having any substantial involvement in management of the agencies.

However, you did work as a legislative liaison and assisted the Department of Parks, the Department of Tourism, the Department of Fish and Wildlife Resources, and the Kentucky Heritage Council on legislative items. Further, since October 2005 you have served as the Acting Executive Director of the Kentucky Office of Energy Policy and thus have been directly involved with all matters before that agency.

You plan to leave your state employment, effective September 1, 2006, and go to work for ConnectKentucky, a non-profit organization dedicated to the deployment of broadband and information technologies throughout Kentucky. ConnectKentucky is an alliance of partners in private industry, government, and universities who work together to develop the most effective technological infrastructure for Kentucky. ConnectKentucky's mission is to support technology-based economic development.

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During your state-government tenure you have been aware of ConnectKentucky's activities, but have had no business interactions with them. They have never held any contracts with any agencies within the Cabinet during your state tenure, but currently are pursuing contractual opportunities with state agencies not within the Cabinet. In order to promote public confidence in the integrity of state government, you ask for an opinion regarding your departure from state employment.

Please find enclosed the pamphlet, *Leaving State Government?*, which provides guidance for your post-employment activities.

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.

The provisions above provide that within six months of leaving state employment you may not accept employment with any person or business that does business with or is regulated by the state in matters in which you had direct involvement during the last three years of your employment. Since you state that you had no direct involvement with ConnectKentucky as part of your official position with the state, and that the Cabinet holds no contracts with ConnectKentucky, it appears that you would not be prohibited from accepting employment with ConnectKentucky provided no one under your supervision had any direct involvement with ConnectKentucky as well.

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Further, even if you or someone under your supervision had direct involvement with ConnectKentucky during your tenure, you are not prohibited from accepting employment with ConnectKentucky if you are returning to the business or profession in which you were employed prior to your state employment. However, for six months you may not work on matters in which you had direct involvement during your tenure.

The Commission also points out, pursuant to KRS 11A.040(8) and (9), stated below, that for one year following your departure from state employment, you are prohibited for lobbying in matters in which you had direct involvement the last three years, and you may not represent a person or business before the state in matters in which you had direct involvement the last three years. You are considered to have been directly involved in any matters on which you directly worked or on which employees under your supervision directly worked.

(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.

Also provided for your information and guidance is Advisory Opinion 06-22 issued concerning post-employment of a former chief of staff in the Environmental and Public Protection Cabinet.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb

Enclosure: Advisory Opinion 06-22