

Executive Branch Ethics Commission
ADVISORY OPINION 07-28
August 24, 2007

RE: May former state employee communicate with his former state agency on behalf of his current employer regarding implementation of existing contracts or grants awarded by his former agency?

DECISION: Yes, assuming neither the former state employee nor anyone under his supervision had any involvement with such contracts or grants during the last three years.

This opinion is issued in response to your August 6, 2007, request for an advisory opinion from the Executive Branch Ethics Commission (“Commission”). This matter was reviewed at the August 24, 2007, meeting of the Commission and the following opinion is issued.

You seek an opinion from the Commission regarding your current employment in relation to your past employment with the Kentucky Cabinet for Economic Development (“KCED”). As an affiliate of a 501(c)(3) organization, you state that your current employer has in the past sought and received grant funding through KCED and its affiliated Board, the Kentucky Economic Development Finance Authority (“KEDFA”), with the funding request initiated through the Department of Commercialization and Innovation (“DCI”) within KCED.

You indicate that during previous employment in state government, you served as the Executive Director of KCED’s Office of Research and Information Technology. In that position, you state that you were not involved in promoting, recommending, or approving financial incentives or grants. In your current position with your new employer, you do not plan to approach KCED for the purpose of obtaining grants, incentives, or funding for your current employer until at least six months after your separation from KCED. However, you indicate that you may need to meet with KCED staff to provide updates and coordinate existing grants prior to six months of separation.

You ask whether you may contact your former employer, KCED, on behalf of your current employer regarding implementation of existing contracts or grants awarded by KCED or KEDFA.

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As an executive director with KCED you were an officer as defined in KRS 11A.010(7) of the Executive Branch Code of Ethics (the "Code"). Thus, you are subject to the Code's post-employment provisions set forth at KRS 11A.040(6)-(7), reprinted below:

(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. This provision shall not apply to a contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general public or that are made at public auction. This provision shall not apply to former officers of the Department of Public Advocacy whose continued representation of clients is necessary in order to prevent an adverse effect on the client.

(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

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or public servant from receiving public funds disbursed through entitlement programs.

Regarding the provisions of KRS 11A.040(7), you are prohibited for six months after leaving your position from accepting employment or compensation from any person or business with which you or anyone under your supervision had direct involvement during the last three years of your state tenure. However, if you return to the profession or occupation in which you were involved prior to your state employment, you may immediately accept employment with a company that does business with the state in matters in which you may have been directly involved, but for six months may not work on any matters in which you or anyone under your supervision was directly involved.

Although you state that you had no involvement with promoting, recommending or approving financial incentives or grants for KCED, you do not state in the information that you have provided whether you or anyone under your supervision had any direct involvement with your current employer. If neither you nor anyone under your supervision were directly involved with your current employer during your last three years of employment with KCED, you were not prohibited, immediately upon leaving state employment, from accepting employment with or compensation from the company, regardless of the fact that the company had direct involvement with the Cabinet, provided you did not use your official position to give yourself an advantage in obtaining such employment. See KRS 11A.020(1)(d), which provides:

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

...

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Of more particular relevancy to your question at present, though, are the post-employment provisions contained in KRS 11A.040(8) and (9) provided below:

(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.

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(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.

For one year from the date you left state government, you may not act as a lobbyist for your new employer in matters in which you or anyone under your supervision had direct involvement during the last thirty-six (36) months of your state employment. Also, **for one year** after leaving KCED, you may not represent your new employer before the KCED in matters in which you or anyone under your direct supervision were directly involved during the last thirty-six (36) months of your state employment. "Represent" means to communicate with an agency on behalf of someone else.

You would not be prohibited from communicating immediately with your former employer, KCED, on behalf of your current employer regarding implementation of existing contracts or grants awarded by KCED or KEDFA so long as neither you nor anyone under your supervision had any involvement with those particular contracts or grants during the last three years of your state tenure.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: John A. Webb