

Executive Branch Ethics Commission  
**ADVISORY OPINION 07-29**  
August 24, 2007

**RE:** Post Employment Issues

This opinion is issued in response to your August 14, 2007 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 24, 2007 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. You currently are employed by the Transportation Cabinet (the "Cabinet") as the Executive Director for Project Delivery, a position that you have held since 2005 and that oversees the Division of Construction Procurement, the Division of Construction, and the Division of Materials. The Division of Construction Procurement advertises roadway construction projects to be let to contract. Once a contract is awarded, the Division of Construction administers the contract and the Division of Materials assures compliance with materials specifications.

You plan to retire from your position and are considering applying for a position with a firm that contracts with the Cabinet for planning or design projects. Your position with the Cabinet deals only with projects after completion of the planning and design phases of the contract process. Once the planning or design phase is complete, the consulting firm will typically no longer have any involvement with the contract. The primary duties of the position for which you will be applying include coordination of the utility and right-of-way relocation phase on future projects. Typically, these phases are completed prior to the Cabinet letting the project to construction.

You request an opinion as to any potential ethical conflicts that the position for which you are considering applying may cause you if you were to obtain it. You also state that you were employed by the consulting engineering firm prior to your state employment, approximately 24 years ago.

As an Executive Director, you are considered to be an "officer" as defined in KRS 11A and thus are subject to the provisions in KRS 11A.040 (6) and (7) below which are applicable to officers:

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

Because you state that you will be returning to the business/profession in which you were employed prior to your state employment, you are not prohibited, upon your retirement, from immediately accepting employment with a consulting firm with which you may have had direct involvement, provided for six months you don't work on any matters for your new employer with which either you or anyone under your supervision had involvement. "Matter" means any case, project, grant, proceeding, application, determination, issue, contract, claim, investigation, charge, legislation, or question. Thus, in any new employment, for six months you should not work on any projects if during your state employment either you or anyone under your ultimate supervision worked on the same project, even if the phase on which you will be working is different than the phase on which you worked during your state tenure. You are not prohibited

**EXECUTIVE BRANCH ETHICS COMMISSION**

**ADVISORY OPINION 07-29**

August 24, 2007

Page Three

from immediately working on any new projects so long as both you and those employees under your ultimate supervision had no involvement with the project during your state tenure.

Further, for six months upon your leaving state employment, you need to ascertain that any work that you will be performing for your new employer will not be fulfilling a part of the contract that your new employer has with the Cabinet. KRS 11A.040 (6) prohibits you for six months from “enjoying” a part of a contract with the Cabinet. If your new employer has a contract with the Cabinet and your work will be fulfilling part of that contract, then you are considered to be enjoying part of the contract.

The Commission also points out that you are subject to the provisions of 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.

(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, you should not represent any new employer before the state in any project with which you or anyone under your supervision had direct involvement during your tenure even if such representation of the project is not the same phase in which you had involvement during your tenure. “Represent” includes any form of communication on behalf of your new employer. Conversely, you immediately may represent any new employer before the Cabinet concerning any projects with which neither you nor anyone under your supervision had any direct involvement.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Chair: John A. Webb

Enclosure: *Leaving State Government?*