

Executive Branch Ethics Commission
ADVISORY OPINION 08-29
September 26, 2008

RE: Does KRS Chapter 11A permit a Division Director, who is a licensed attorney but who had no attorney responsibilities with the agency during his tenure with it, to return to private law practice and immediately begin to represent clients before his former employer?

DECISION: Yes, but only to the extent he refrains from participation in matters in which he was directly involved for the last thirty six months of his state employment for a period of one year.

This opinion is issued in response to your August 6, 2008, amended request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September, 26, 2008, meeting of the Commission and the following opinion is issued.

You provide the following relevant facts. You are currently employed as a Division Director in the Public Protection Cabinet's Department of Charitable Gaming. You are responsible for the day-to-day operations of the Division of Licensing and Compliance, which includes granting and denying licenses to applicant's and inspections of licensed entities.

You are also a licensed attorney, but do not perform any legal duties in your current position. You do, however, refer matters to the Department's attorneys requesting that administrative actions be initiated seeking penalties from licensees found guilty of violating Kentucky's charitable gaming laws and regulations. In referring these cases, you are intimately involved in the decision making process leading up to the decision to file an administrative complaint against a licensee.

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You inquire first, "What are the constraints under which I could begin to immediately represent clients in administrative actions filed against them by the Department?" Those constraints are set forth in KRS 11A.040(9) which provides:

(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.

KRS 11A.010 provides the following:

(17) "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else;

(18) "Directly involved" means to work on personally or to supervise someone who works on personally;

Based upon the foregoing, you are prohibited from representing or acting on behalf of any applicant or licensee of the department on any matter that you or someone you supervised worked on or any matter for which you or anyone you supervised had any decision making authority. For instance, after your retirement, you may represent a new applicant or licensee before your former agency in any new matter that was initiated after your retirement.

You suggest in your request however, that since you were never an attorney with the Department, you were never directly involved with matters of litigation therefore you could represent any applicant or licensee immediately upon your retirement. The Commission disagrees. You specifically state that you were in charge of operations that included the denial of licenses to applicants and were "intimately involved in the decision-making process leading up to the decision to file an administrative complaint against an applicant or licensee." The phrase "directly involved" refers to the matter at issue and not to your role in the department as a non-attorney director. Thus, you are prohibited from representing any applicant or licensee in any administrative action initiated or contemplated within the last thirty six months of your employment.

In summary, KRS 11A.040(9) operates to bar your representation of any applicant or licensee in any matter that you dealt with or your employees dealt with during the last

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thirty six months of your employment for a period of one year after leaving state government.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Gwen R. Pinson

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