

ADVISORY OPINION 92-12

December 21, 1992

RE: Request for Advisory Opinion

Your request dated December 8, 1992, has been referred to the Executive Branch Ethics Commission (the "Commission") for an opinion regarding the application of KRS 11A, the Executive Branch Code of Ethics. The Commission hereby issues the following advisory opinion.

The relevant facts are as follows. Corporation "X" presently does business with the Commonwealth of Kentucky. Corporation "Y" does no business with the Commonwealth. Although neither Corporation X nor Y own the other, they do share a common stockholder, who owns more than ten percent (10%) of the outstanding stock of each. John Doe is a state employee, who is subject to the Executive Branch Code of Ethics. He plans to work for Corporation Y upon retirement from the state.

Per a telephone conversation, you informed our staff that John Doe works in the Transportation Cabinet and that Corporation Y, Mr. Doe's prospective employer, is in the construction business. However you reiterated that Corporation Y transacts no business with the Commonwealth. Nonetheless, you have inquired whether Mr. Doe may accept employment with Corporation Y, in light of the fact that a particular stockholder owns more than ten percent (10%) of the stock of Corporation Y and Corporation X and because Corporation X does transact business with the Commonwealth.

KRS 11A.040(6) provides:

No present or former public servant shall, within six (6) months of 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 the state in matters in which he was directly involved during 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, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved 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.

KRS 11A.040(8) provides:

A former public servant shall not represent a person in a matter

before a state agency in which the former public servant was directly involved, 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.

Because Corporation Y transacts no business with the Commonwealth, the prohibitions contained in Section (6) and (8) do not apply. The Commission's conclusion is not changed by the fact that Corporation Y has a stockholder, who owns ten percent (10%) or more of the stock of another company, which does transact business with the state.

In reaching its opinion, the Commission assumes there is a real separation between the activities of Corporation X and Corporation Y and that Mr. Doe's work for Corporation Y would represent no involvement in the activities of Corporation X.