

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 93 – 7**

April 2 1993

RE: Are Commonwealth's Attorneys and County Attorneys subject to the provisions of KRS Chapter 11A?

This matter was reviewed at the March 5, 1993, meeting of the Executive Branch Ethics Commission and, after consultation with the Attorney General's office, again at the April 2 meeting. The following opinion is issued:

The question has been posed to the Executive Branch Ethics Commission (the "Commission") as to whether commonwealth's and county attorneys are subject to the Executive Branch Code of Ethics (KRS Chapter 11A). If so, then the question arises as to whether they may hold Personal Service Contracts with the Department of Highways in the Transportation Cabinet. A final question is whether members of law firms of which county or commonwealth's attorneys are members may hold Personal Service Contracts with the Department of Highways.

KRS Chapter 11A is applicable to certain personnel in the executive branch "of state government." Commonwealth's and county attorneys, as provided in Sections 97 and 99 of the Kentucky Constitution, are elected only by voters of a county or local district. In most of their duties, they are not accountable to the executive branch of state government. Therefore, it is our opinion that commonwealth's and county attorneys are not subject to KRS Chapter 11A's prohibitions against holding state contracts. By extension, member of law firms to which commonwealth's or county attorneys belong are likewise not subject to KRS Chapter 11A's prohibitions against state contracts.

Although there appears to be no blanket prohibition against commonwealth's and county attorneys holding state contracts, the Commission envisions circumstances in which conflicts of interest could arise under such contracts, particularly contracts calling for legal work inside the district from which a commonwealth's or county attorney is elected. The Commission encourages the Transportation Cabinet to follow policies to avoid any real or perceived conflict of interest if such contracts are awarded.

In addition, there are statutes other than KRS Chapter 11A which may restrict the awarding of state contracts to commonwealth's or county attorneys. The following are examples:

KRS 15.755(3) prohibits commonwealth's attorneys in more populous counties from private law practice. A legal services contract with a state agency would presumably involve such practice.

KRS 69.240 makes it the duty of a county attorney to investigate and collect all unsatisfied judgments in favor of the Commonwealth in his county.

KRS 177.082 empowers the Department of Highways to direct the county

attorney or "any attorney authorized to represent the Commonwealth" (which would include a commonwealth's attorney) to file a condemnation petition.

The Cabinet should take care not to enter into a contract with a commonwealth's or county attorney for legal services which such officers are directed by statute to furnish to the Cabinet as a regular part of their official duties or which would be expressly banned.

Several opinions of the Attorney General (OAG) may be of interest in connection with points made above. See OAG's 68-114; 70-307; 74-111; and 80-341.

Although this opinion is directed to the Transportation Cabinet, it is applicable to other agencies which might be contemplating the award of contracts to commonwealth's and county attorneys.