

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93 – 8

April 2, 1993

RE: State agency questions representation of an individual before Kentucky Personnel Board by its former employee

This letter is in response to your March 9, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 2, 1993, meeting of the Executive Branch Ethics Commission and the following opinion is issued:

The relevant facts are as follows: an attorney ("Employee") formerly employed by the your agency (the "Department") is representing a current Department employee in an appeal to the Personnel Board, contesting the Department employee's involuntary transfer. Employee left the employ of the Department in July, 1992. The employment actions being appealed were not at issue prior to Employee's separation from employment at the Department.

This request implicates KRS 11A.040(8), which provides as follows:

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.

The Commission has had occasion to construe this prohibition previously. In Advisory Opinion 92-8 (copy enclosed), the Commission held that the phrase "in which the former public servant was directly involved" modifies the word "matter" and not the words "state agency." In other words, the prohibition operates to prohibit Employee from representing individuals in matters in which Employee was directly involved while Employee was at the Department. Thus, Employee would be permitted to represent individuals before the Department, so long as the subject matter of the representation was not something in which Employee was directly involved while at the Department.

In this case, it is undisputed that the personnel actions at issue before the Personnel Board arose after Employee left the Department. Accordingly, Employee could not have been "directly involved" in such matters while Employee was at the Department.

We find no violation of KRS Chapter 11A based on the facts and circumstances presented to us. Thank you for your request.