

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93 – 22

June 7, 1993

RE: Former employee wishes to obtain personal service contract with the state

This letter is in response to your May 7, 1993 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 7, 1993 meeting of the Commission. The following opinion is issued.

The relevant facts presented to the Commission are summarized as follows. You are currently a state employee who, due to personal reasons, must resign from your position. As part of your current job responsibilities, you are establishing a highly technical public finance program. Your agency would like to retain your expertise through a personal service contract to continue setting up the program. You ask if the provisions of KRS 11A.040(6) prohibit your working as a consultant through a personal service contract.

KRS 11A.040(6) states:

No present or former public servant shall, 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 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.

The Commission concludes that this provision does not prohibit you from obtaining a personal service contract with the state. Although it does prohibit you, for six months, from accepting employment or compensation from any person or business that contracts or does business with the state, it does not prohibit you from receiving compensation directly from the state for a service you perform. In substance, you are continuing your employment with the state -- possibly on a more limited basis. Personal service contracts are used by the state to secure professional, technical, scientific or artistic services when state-employed personnel cannot perform these services or it is not feasible for them to perform such services.

Personal services contracts are common in state government and well known to the General Assembly. The Commission believes that, had the General Assembly intended to

prohibit award of personal services contracts under the above statute, it would have included specific language to do so.

As a further indication of legislative intent, the Commission notes that the General Assembly's Personal Services Contract Review Subcommittee recently approved a contract awarded to a former public servant within six months of termination of his state employment and relating to matters in which he was directly involved while a state official.