

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93 – 30

June 7, 1993

RE: Employee asks if employment with private law firm to engage in representation related to state government may be accepted

This letter is in response to your June 2, 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 and the following opinion is issued.

The relevant facts presented to the Commission are as follows. The public servant is an attorney employed by the Natural Resources and Environmental Protection Cabinet to provide legal services involving enforcement, compliance, and permitting under environmental statutes and regulations. As such, the public servant's responsibilities include providing legal services to the Underground Storage Tank Branch of the Cabinet. This Branch of the Cabinet regulates petroleum storage tank environmental issues. The public servant was involved in drafting the bill which amended the statutes applicable to the Petroleum Storage Tank Environmental Assurance Fund Commission ("PSTE AFC"). This commission is responsible for funding the cleanup of leaky underground storage tanks. It is tied to the Natural Resources Cabinet for administrative purposes.

Other responsibilities of the public servant include coordination between the Underground Storage Tank Branch and the PSTE AFC concerning the adoption of PSTE AFC administrative regulations. The public servant also gives general legal advice on issues involving the Transportation Cabinet and the Natural Resources and Environmental Protection Cabinet.

The public servant has been offered employment by a private law firm. The firm has personal service contracts with the Commonwealth of Kentucky and represents clients before the Natural Resources and Environmental Protection Cabinet. Specifically the firm provides legal services to the PSTE AFC involving interpretation and application of statutes and regulations specific to the PSTE AFC. In addition, the private law firm provides legal services to the transportation cabinet concerning environmental issues and laws, and also represents persons before the Natural Resources and Environmental Protection Cabinet concerning environmental laws. The public servant is not directly involved in issues concerning the latter two of these three areas.

Prior to employment by the Commonwealth of Kentucky, the public servant served as a law clerk for two years.

The public servant asks if employment with the private law firm may be accepted pursuant to KRS 11A.040(6) if the public servant does not engage in representation pertaining to matters in which the public servant was directly involved while a public servant.

Additionally, the public servant asks if employed by the private law firm, may the public servant engage in representation of:

- 1) The PSTEAFC, subject to exclusion from participation in any matter concerning the application of PSTEAFC administrative regulations; and
- 2) The Transportation Cabinet concerning condemnations actions involving environmental issues; and
- 3) Persons before the Natural Resources and Environmental Protection Cabinet concerning environmental issues.

In considering this request, the Commission takes note of provisions in KRS 11A.040(6) and (8) which provide:

(6) 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 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.

...

- (8) 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 believes the public servant may accept employment with the private law firm provided that, for a period of six months, the public servant does not work on any matter in which the public servant was directly involved in state government. The public servant is returning to the private legal profession in which the public servant was involved prior to state employment. The provision noted allows a state employee to return to that profession with a six-month limitation.

Regarding the representation of the PSTEAFC, the Commission considers the public servant to be directly involved in the interpretation and application of the statutes and regulations pertaining to the PSTEAFC. Therefore, the Commission concludes that for a period of six months, the public servant must abstain from work related to the PSTEAFC.

The public servant may, upon employment by the private firm, represent the Transportation Cabinet concerning environmental issues provided the public servant does not work on any issues in which the public servant was directly involved as a state employee.

Likewise, the public servant may represent persons before the Natural Resources and Environmental Protection Cabinet provided the public servant was not directly involved in these matters as an employee. The Commission takes particular note that the public servant is not directly involved with matters relating to either of these areas in which the private law firm does business with the state.

We emphasize that if any of the potential matters in which the public servant may be involved in private employment are those in which the employee was involved in state employment, the public servant is prohibited from representing the Transportation Cabinet for a period of six months and a person before a cabinet for a period of one year following termination of state employment.