

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 93 – 44**

August 23, 1993

RE: Reconsideration of Advisory Opinion 93-33

This letter is in response to your August 3, 1993, request for a reconsideration of Advisory Opinion 93-33. This matter was reviewed at the August 23, 1993, meeting of the Commission, and the following opinion is issued.

You provide the relevant facts to the Commission as follows. Advisory Opinion 93-33 placed future employment restrictions on an agency head who was leaving state government employment. The former agency head maintains that these restrictions do not apply to him because his employment with the state was through a personal service contract. This contract required him to serve as the as the President and Chief Executive Officer of the agency from July 1, 1992 - June 30, 1993. His responsibilities, per the contract, included setting and administering policy, overseeing the day-to-day management of exposition center, employing staff, and initiating contracts with third parties. You question whether the future employment restrictions apply only to merit and non-merit employees of state government, or if the restrictions also apply to agency heads who work full-time under personal service contracts.

The Commission believes the agency head was "in substance" an executive branch employee during the period of the personal service contract. The responsibilities detailed in the personal service contract indicate that this contract required the agency head to work on a full-time basis for the state. Retirement, health, and other contributions were included as part of the contract also indicating that the agency head was in essence an employee of the state. The contract also states that regular state compensation was not provided because the amount was not competitive with salaries paid for experienced personnel in this business. A personal service contract was used only to allow compensation to be paid that was competitive. Therefore, the Commission concludes that the agency head was an executive branch employee and thus, subject to future employment restrictions in Advisory Opinion 93-33.