

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 93 – 92**

December 16, 1993

RE: Employee seeks guidance on career opportunities after employment with state government

This opinion is in response to your December 2, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 16, 1993, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Office of Financial Management and Economic Analysis within the Finance and Administration Cabinet. You sought this position to gain experience about the financial investment and debt management business. In your position you review proposals and recommend firms to do business with the state, but do not have approval authority. You review proposals from a wide variety of professions including trustees, auditors, bond counsels, underwriter counsels, underwriters, financial advisors, bond printers, and official statement printers.

Recently, you began seeking employment opportunities outside state government with investment bankers, banks, and other financial institutions, some of whose proposals you had reviewed in your state employment. You were notified by one firm, "Due to your current employment with state government and Kentucky's new ethics law, we are not in a position to discuss employment opportunities at this time."

When you accepted employment with state government, no law was in place relating to prohibitions of employment after leaving state government.

You believe that if this law prohibits you from accepting employment from firms whose proposal you have reviewed, it will prohibit you from accepting employment from the majority of firms for which you are qualified to work.

You ask for a clarification as to your career opportunities after your employment with state government. If you are prohibited from accepting employment with a firm for six months:

- 1) May you negotiate an agreement with the firm for employment in six months after leaving state government?
- 2) How much time must elapse after you review proposals from a firm before you may immediately seek employment with the firm?

KRS 11A.040(6) provides:

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 believes that for a period of six months following state employment you are prohibited from accepting employment from any business which contracts or does business with the state in matters in you were directly involved. Thus, you may not accept employment from a firm whose proposal you have reviewed.

The Executive Branch Code of Ethics contains no specific prohibitions against an employee negotiating an agreement with a firm for employment not to begin until six months after leaving state government. If such negotiations with your prospective employer occur while you still hold your state job, you should abstain from action with the firm with which are negotiating and comply with KRS 11A.020(3) and 11A.030 as provided below:

KRS 11A.020(3):

When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

KRS 11A.030:

In determining whether to abstain from action on an official decision because of a possible conflict of interest, a public servant should consider the following guidelines:

- (1) Whether a substantial threat to his independence of judgment has been created by his personal or private interest;
- (2) The effect of his participation on public confidence in the integrity of the executive branch;

(3) Whether his participation is likely to have any significant effect on the disposition of the matter;

(4) The need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the executive branch; or

(5) Whether the official decision will affect him in a manner differently from the public or will affect him as a member of a business, profession, occupation, or group to no greater extent generally than other members of such business, profession, occupation, or group. A public servant may request an advisory opinion from the Executive Branch Ethics Commission in accordance with the commission's rules of procedure.