

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 94-24

April 19, 1994

RE: May executive branch attorney contract with a state agency to handle criminal appeals?

DECISION: No

This opinion is in response to your April 11, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 19, 1994, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. The Department of Public Advocacy within the Public Protection and Regulation Cabinet often contracts with attorneys in private practice to handle appeals for a fee not to exceed a maximum amount. You ask *Under KRS 11A.040(4), may a full-time attorney employed by an agency within the executive branch contract with a department of the Public Protection and Regulation Cabinet to handle criminal appeals before the Kentucky Supreme Court and Court of Appeals?*

An attorney employed within the executive branch of state government is considered a public servant under KRS 11A.010(9) below:

- (9) "Public servant" means:
 - (a) The Governor;
 - (b) The Lieutenant Governor;
 - (c) The Secretary of State;
 - (d) The Attorney General;
 - (e) The Treasurer;
 - (f) The Commissioner of Agriculture;
 - (g) The Superintendent of Public Instruction;
 - (h) The Auditor of Public Accounts;
 - (i) Each Railroad Commissioner; and
 - (j) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

KRS 11A.040(4) provides:

(4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by any state agency. This provision shall not apply to a contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain or to agreements which may directly or indirectly involve public funds disbursed through entitlement programs.

A public servant is prohibited from holding any contract or agreement with any state agency in the executive branch. Thus, an attorney employed by an executive branch agency may not contract with a department of the Public Protection and Regulation Cabinet to handle criminal appeals before the Kentucky Supreme Court and Court of Appeals.