

EXECUTIVE BRANCH ETHICS COMMISSION  
ADVISORY OPINION 94-32

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May 17, 1994

RE:           May employee accept position as environmental engineer?

DECISION:    Yes, if position will not involve matters in which directly involved in state position.

This opinion is in response to your April 29, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 17, 1994, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are currently employed as a principal assistant in the Commissioner's Office of the Department for Environmental Protection of the Natural Resources and Environmental Protection Cabinet. You serve as the permits coordinator and, as such, advise persons and entities as to the types of environmental permits that are required in order to do business within the state. In addition, you receive applications for pollution control tax exemption certificates which you forward to the appropriate division within your department. You are not involved in any decision-making or regulatory process involving permits or pollution control tax exemption certificates. Prior to your employment with state government, you were employed as an environmental engineer.

You have been offered a job as an environmental engineer with a new corporation and wish to leave your state position. In your new position, you will be responsible for the company's compliance with Kentucky's environmental statutory and regulatory requirements, including applying for permits. You believe that you will not be involved in any matters in your new employment in which you were directly involved during your state employment.

The company which has offered you employment is a recently formed joint venture of two former individual companies. In your state employment you have had limited contact with one of the individual companies. This contact involved meetings regarding environmental permits needed to do business in Kentucky and forwarding of the individual company's pollution control tax exemption certificate to the appropriate division for review. It is your understanding that neither the new corporation nor the original companies do business with the state.

You ask: *In light of the above, is my acceptance of a position with this corporation a violation of the Executive Branch Code of Ethics and, in particular, KRS 11A.040(6)?*

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, because you are returning to the profession in which you were involved prior to your state employment, you may upon resignation immediately accept employment as an

environmental engineer with the new corporation. However, for six months you must refrain from working on any matter in your new employment in which you were directly involved in state government. Specifically, you should not be involved in your new employment in any business involving the Office of the Commissioner within the Department for Environmental Protection. For six months, your contact with the Department in areas in which you were involved, even in a non-decision-making capacity, should be limited to the filing of applications for permits and tax exemption certificates. You are not prohibited from performing such functions.