

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 94 - 41

June 16, 1994

RE: Do future employment opportunities present possible ethical violations?

DECISION: Yes, in certain conditions.

This opinion is in response to your May 31, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 16, 1994, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are a principal assistant for a commissioner of a department within state government. You are exploring employment opportunities outside state government and request an opinion on whether, upon leaving state government, any of the three following possible employment opportunities present ethical violations.

The first employment situation involves a new consulting firm which has emphases in four areas.

- Consulting on economic development opportunities, in some instances representing the local government, in others representing the interested business;
- Working with state agencies on behalf of various clients;
- Lobbying the legislature on behalf of a client; and
- Advising clients regarding the implementation of newly enacted legislation which may affect the specific client.

You ask the following questions pertaining to the above situation:

1. *Would I be allowed to own a portion of the consulting firm prior to the end of my one-year layout if I did no work in the area of lobbying or matters directly related to the department for which I work?*
2. *If not, could the firm employ me to work in areas that do not involve lobbying or the department for which I work?*
3. *If neither of these alternatives is permitted, could the firm state in their introductory brochure that I will be joining the firm on a specific date (one year after leaving state employment)?*

Concerning the second employment opportunity you ask if you may, immediately upon resignation from state government, accept employment as a consultant, which will involve working with officials of another department within the Cabinet for which you currently work.

In the third situation, you ask if you may serve as executive director of an association of related businesses with the clear understanding that for one year following your resignation from state government you will be unable to represent them before the legislature.

In considering your request, the Commission takes note of the following provisions of KRS 11A.040:

- (6) No present or former public servant shall, within six 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.

(7) A former public servant shall not act as a lobbyist or lobbyist's principal 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.

(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.

Upon resignation from state government, you are prohibited for one year from serving as a lobbyist or employing a lobbyist to act on your behalf. Therefore, you are prohibited from owning a significant portion of a consulting firm which employs lobbyists for one year after leaving your state position. Although the Code of Ethics does not specify the minimum percentage of ownership by which you would be considered an employer, the Commission, based on other portions of the Code, believes you should not own more than five percent (5%) of a business that employs a lobbyist within the one-year period.

You may not accept employment with a consulting firm or other company for six months following your resignation from state government if the firm or company does business with the state in matters in which you were directly involved. If the consulting firm or company does not do business with the state in matters in which you were directly involved during your state employment, you may immediately accept employment with the firm or company, but must refrain from lobbying for one year.

In addition, if you are returning to the profession or occupation in which you were employed prior to your state tenure, you may immediately accept employment with the firm or company as long as you refrain for six months from working on any matter in which you were directly involved in your state job and if you refrain, for one year, from acting as a lobbyist or representing a person before a state agency in a matter in which you were directly involved. In previously issued Advisory Opinions 92-8 and 93-8 (copies of which are enclosed), the Commission held that the phrase "in which the public servant was directly involved" modifies the word "matter" and not the words "state agency" in KRS 11A.040(8).

You may accept employment as a consultant or executive director with any company or association as long as you remain within the above constraints. The Executive Branch Code of Ethics does not prohibit a consulting firm from stating in a brochure the date you will be joining the firm.