

ADVISORY OPINION 94 - 46

September 13, 1994

RE: May former employee be involved in new employment
 (1) with projects of former agency, and
 (2) in contract negotiations with former agency?

DECISION: (1) Yes, if not involved with project during state employment
 (2) No

This opinion is in response to your August 22, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 13, 1994, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You retired from your position as Chief District Engineer for the Highway District 7 Office within the Transportation Cabinet on July 31, 1994. After consultation with the Commission office, you accepted employment with an engineering firm. The firm does business with the state, but you were never involved or had any contact with the firm in your state employment.

You ask two questions concerning your new employment:

(1) May you work on Kentucky Transportation Cabinet projects with which you had no involvement prior to retiring from the state?

(2) May you be directly involved with the contract negotiations for these consulting engineering services?

In considering your request, the Commission takes note of the following provisions of KRS 11A.040(6), (7) and (8):

(6) No present or former officer or public servant listed in KRS 11A.010(9)(a) to (i) 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 the last 36 months of 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 during the last 36 months of his tenure 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.

The Commission notes that in your former state position you were considered an officer, and thus are subject to the provisions in KRS 11A.040(6). Based on those provisions, you and your company must refrain for six months from working on any matter in which you were involved during your state employment. However, you may work on Transportation Cabinet projects for your new firm if you had no involvement with either the projects or the firm during your state employment.

As stated above, you may not act as a lobbyist for one year after leaving state employment. The Commission believes in KRS 11A.040(7) the term "lobbyist" applies to executive agency lobbyists as well as legislative agents. Persons involved in contract negotiations with the executive-branch agencies are subject to the registration requirements for executive agency lobbyists contained in KRS 11A.211. Unless you are covered by one of several exceptions, you should not be involved in contract negotiations with the Transportation Cabinet for one year after your retirement. These exceptions are summarized on page 11 of the *Executive Agency Lobbyist Handbook* enclosed.