

ADVISORY OPINION 94 - 47

September 13, 1994

RE: May former employee represent persons before former agency?

DECISION: Yes, if not directly involved during state employment in any matters involving those persons.

This opinion is in response to your August 23, 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. As a Hearing Officer in the Interim Office of Health Planning and Certification, your duties included issuing advisory opinions and conducting hearings on certificate of need and health facility licensure matters. These duties have been absorbed by the new Health Care Policy Board. You are not considered an officer pursuant to KRS 11A.010(7), and thus, upon leaving state government you are not subject to the prohibitions in KRS 11A.040(6).

You ask whether, upon leaving state employment, you are prohibited from immediately representing any client before your former office or its successor agency, the Health Care Policy Board, or only those clients in whose cases you were directly involved in your state employment.

KRS 11A.040(7) and (8) provide:

(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.

In Advisory Opinion 92-8 (a copy of which is enclosed), the Commission held the phrase, in which the former servant was directly involved" modifies the word "matter" and not the words "state agency". Thus, for one year you are prohibited from representing clients before your former agency or its successor agency, the Health Care Policy Board, concerning matters in which you were directly involved as a state employee. Citing the examples in your request, you should refrain for one year from representing clients in hearings involving advisory opinions which you drafted, or involving motions for reconsideration which were pending when you left state employment.

You are permitted to represent clients immediately before your former agency and the Health Care Policy Board as long as you were not directly involved in any matter involving those clients during your state tenure.