

ADVISORY OPINION 94-69

December 15, 1994

RE: May a former public servant represent a company before his former agency if he worked previously on matters directly involving that company?

DECISION: No, for one year following termination of employment with state agency.

This opinion is in response to your November 21, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 15, 1994, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You currently work as a Permit Review Engineer for the Department for Environmental Protection, Division for Air Quality (the "Division"). Your primary responsibilities are reviewing permit applications and writing permits. The Division issues permits for construction of new sources of air pollutants, and for modifications to existing sources. In the near future, the Division will be requiring Title V operating permits from certain sources. These Title V permits will authorize the operation of all existing sources of air pollutants at the source, combining all requirements into a single comprehensive permit.

You say that the post-employment restrictions contained in KRS 11A.060(6) are not applicable to your current position. However, you want an opinion from the Commission whether the following two situations violate KRS 11A.040(8), which states:

- (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 first situation involves your leaving your state employment and joining a private consulting firm. At the firm you will be asked to prepare permit applications for a company for which you approved permits in your position with the Division. You will also represent the company in meetings and telephone conversations with the Division. The applications and meetings would be for proposed future construction projects at the company, not the projects for which you reviewed applications before.

In Advisory Opinion 92-8, a copy of which is attached to this opinion, the Commission determined that the phrase, "in which the former public servant was directly involved" modifies the word "matter" and not the words "state agency." The prohibition operates to prohibit an employee from representing individuals in matters in which the employee was directly involved while working as a public servant. Thus, you would not be permitted to represent the company described above before the Division if the same company had permit matters in which you were directly involved before your Division during your employment there. The Commission believes you may represent before your former agency a company which had no matters in which you were directly involved before your agency during your employment there.

The second situation about which you inquire is when you are asked to prepare a Title V operating permit application for the same company to submit to the Division. This is also a new permit application, but it includes all sources of air pollution at the source, including several for which you reviewed construction permit applications within the previous year. The Commission also believes you are prohibited from representing this same company before your old agency for a period of one year.

