

EXECUTIVE BRANCH ETHICS COMMISSION

ADISORY OPINION 95-18

June 27, 1995

RE: Is employee subject to post-employment restriction if he was relieved of duties prior to termination of employment?

DECISION: Yes.

This opinion is in response to your May 2, 1995, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 27, 1995, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. On October 26, 1994, you were relieved of your duties as a Chief District Engineer for the Transportation Cabinet. You were told that this measure was effective immediately "until further notice" and you were instructed to advise the personnel officer of the Cabinet whether you would be using annual or compensatory time during that period.

On April 5, 1995, you informed the Secretary of your Cabinet that you had exhausted your compensatory and annual leave and would be on leave without pay until your anticipated retirement date of May 1, 1995, unless you were returned to work. You requested you be able to work from April 6 to May 1, 1995.

On April 5, 1995, the Secretary restored you to job duties effective April 6, 1995. The Transportation Cabinet's personnel officer advised you that you were temporarily assigned to the State Highway Engineer's Office from April 6, 1995, to May 1, 1995.

In your request for an advisory opinion from the Commission, you ask for Commission approval to seek employment with entities with which you had direct involvement as a chief district engineer, due to the fact that it has been more than six months since you were relieved of the duties of a chief district engineer on October 26, 1994.

The Executive Branch Code of Ethics (the "Ethics Code") contains three postemployment restrictions for state employees. The first postemployment restriction, KRS 11A.040(6), is applicable only to officers, and states:

(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 thirty-six (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

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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 thirty-six (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, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.

A Chief District Engineer is considered an officer pursuant to KRS 11A.010(7). Thus, this postemployment restriction applies to you as long as you were a Chief District Engineer or other officer.

Although you were relieved of your duties as Chief District Engineer on October 26, 1994, you remained in that position until your retirement from state government on May 1, 1995. Therefore, you are prohibited from accepting compensation from anyone who did business with or was regulated by your agency in matters in which you were directly involved until after November 1, 1995. As an exception to this prohibition, you may return to a former business, firm, occupation, or profession in which you were involved prior to beginning your state employment if, for six months, you personally refrain from working on any matter in which you had been directly involved.

The other two restrictions apply to all executive branch employees. KRS 11A.040(7) provides that a state employee may not act as a lobbyist or a lobbyist's principal for a period of one year after leaving office or terminating employment.

KRS 11A.040(8) prohibits state employees from representing a person or entity before a state agency in a matter in which he was directly involved for a period of one year after leaving office or terminating employment.

You are subject to the provisions of KRS 11A.040(7) and (8) until May 1, 1996, which is one year after you terminated your employment with state government.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Livingston Taylor, Chairman