

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 95-25

June 27, 1995

RE: Does "returning to the same business, firm, occupation, or profession" for the purposes of KRS 11A.040(6) include returning to the profession for which employee was educated and licensed prior to state government?

DECISION: Yes.

This opinion is in response to your May 25, 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. You are currently a Deputy State Highway Engineer for the Transportation Cabinet. You began working for state government in 1972, immediately after graduation as an engineer from the University of Kentucky. You have never worked for another employer.

You wish to know if, upon termination from state government employment, you may work immediately for a private engineering firm which has state contracts in which you were directly involved. You intend to refrain, for a period of six months, from working on any matter for which you were directly involved in your state employment.

KRS 11A.040(6) 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 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.

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Since the Transportation Cabinet has been your only employer, you would not be returning to your former business, firm, or occupation. However, if you were a licensed engineer prior to beginning your employment with the state, and if you will be performing as an engineer with the private firm when you leave state government, the Commission interprets this as equal to returning to your former profession. Thus, you would be permitted to accept compensation from a firm which does business with the state in matters in which you were directly involved as long as you refrain, for six months, from working on any matter in which you had been directly involved.

In addition to the above statute, there are two other statutes which impose post-employment restrictions upon you. KRS 11A.040(7) states:

(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.

KRS 11A.040(8) 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.

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BY: Livingston Taylor, Chairman