

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 95-31**

August 24, 1995

RE: May former employee teach class for company with which he was directly involved as a state employee?

DECISION: Yes, but may not communicate with former agency regarding training on behalf of someone else.

This opinion is in response to your July 28, 1995, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 24, 1995, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are a former inspector for the Field Operations Branch of the Division of Air Quality ("Division") within the Cabinet for Natural Resources and Environmental Protection. You left your full-time state employment on August 15, 1994 to work for Fruit of the Loom ("FOL"). Later, you began part-time work as a consultant for Scotty's Contracting and Stone Company ("Scotty's"). Since you had left your state employment at a particularly busy time, Division management requested that you continue performing Division work on weekends and week-nights. You agreed to this arrangement until October 1, 1994.

While you were a Division employee, you wrote several Notices of Violation to an asphalt plant owned by Scotty's in Rockfield, Kentucky. On November 24, 1994, the Division and Scotty's entered into an Agreed Order providing that the enforcement action by the Division would be concluded if Scotty's paid a civil fine of \$2500 and required certain of its employees to obtain visible emissions training.

Scotty's requested the Division agree to allow you, its consultant, provide the visible emissions training to Scotty's employees in compliance with the Agreed Order. The Division agreed that you could provide this training. You ask whether providing visible emissions training to Scotty's employees violates the provisions of the Executive Branch Code of Ethics (the "Ethics Code").

The Ethics Code contains three post-employment restrictions. 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

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 95-31

August 24, 1995

Page Two

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.

Since you were not considered an officer during your state employment, the above statute is not applicable to 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.

Thus, you may not perform lobbying activities until October 1, 1995.

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.

For one year, you may not represent anyone before your former agency in a matter in which you were directly involved as a state employee. Since you were involved in the Division's issuance of the Notices of Violation against Scotty's which resulted in the Agreed Order, you may not represent Scotty's before the Division prior to October 1, 1995.

EXECUTIVE BRANCH ETHICS COMMISSION  
ADVISORY OPINION 95-31

August 24, 1995

Page Three

The Commission believes you may provide visible emissions training to Scotty's employees. However, if you must appear before the Division, or meet with members of the Division to certify, prior to October 1, 1995, that you have provided the training which is necessary to the resolution of the Division's action against Scotty's, you would be in violation of the statute. In such a situation you would be representing Scotty's before the Division in a matter in which you had been involved.

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BY: Martin Huelsmann, Chairman