

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 96-30**

July 2, 1996

RE: May employee receive payment from state agency for service he provided for snow removal?

DECISION: No, because services were rendered prior to July 15, 1996.

This opinion is in response to your May 8, 1996, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 2, 1996, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Division of Pesticides within the Department of Agriculture. In February of this year, upon knowledge that the state contracted for snow removal service, you offered your services for snow removal to the local Transportation Cabinet garage in the county where you live. In March, during the largest snow of the year, you were contacted by the Transportation Cabinet and asked to provide snow removal service at an agreed hourly rate of \$55. You provided 53 hours of service, using your own equipment, from March 19 through 22. Such service was necessary to allow power to be restored to a community. In addition to the wear and tear on your tractor, you furnished fuel and operator wages for the service you provided. The local Transportation Cabinet garage engaged several other individuals with snow removal equipment, in addition to yourself, to perform this service.

Recently, the local Transportation Cabinet garage foreman informed you that a problem existed in paying for the service you had provided. He instructed you to contact the General Counsel for the Transportation Cabinet. The General Counsel informed you of the provisions in the ethics code which prohibit an employee from having an agreement with a state agency. The General Counsel stated that you would not be paid for your service unless the expenditure was approved by someone else. He instructed you to contact the Commission for advice on your situation. In addition, you were told that the law had been changed and, effective July 15, you would no longer be prohibited from providing services to the Transportation Cabinet.

You were unaware that such a provision existed and were only attempting to earn some extra money by offering your services. You believe the foreman at the local Transportation Cabinet garage was aware that you were a state employee because you parked your state vehicle at the garage for a year during the previous administration. However, he also was unaware of the ethics provision governing this matter.

You ask the Commission to review this matter in light of the snow emergency, the change in the law, and the fact that you have never worked for the Transportation Cabinet, and determine whether you may receive payment for your service.

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KRS 11A.040(4) provides:

(4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by any state agency. This provision shall not apply to a contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain or to agreements which may directly or indirectly involve public funds disbursed through entitlement programs.

Effective July 15, 1996, KRS 11A.040(4) will be amended to provide as follows:

(4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to

- (a) a contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
- (b) agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
- (c) a public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises

Based on the provision in KRS 11A.040(4) above, you were prohibited from knowingly having any contract or agreement with any state agency. Thus, prior to July 15, 1996, you were prohibited from having an agreement with a local Transportation Cabinet garage to provide snow removal service and if you accept payment for this service, it would constitute a violation of 11A.040(4).

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BY: Ruth H. Baxter, Chair