

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 96-35**

July 2, 1996

RE: May a former officer accept employment with a non-profit entity which holds a contract with the agency for which the officer formerly worked?

DECISION: Yes, if returning to the same business or profession in which he was involved prior to his tenure with state government and her personally refrains from working on any matter in which he was directly involved.

This opinion is in response to your June 5, 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 served as the Executive Director of the Kentucky Real Estate Commission (the "KREC"). Prior to your employment with the KREC, you were a real estate agent and taught classes pertaining to real estate at a local college. Pursuant to KRS 324.281, the KREC has a statutory duty to conduct continuing education seminars within the real estate field. While you were Executive Director, you signed a contract on behalf of the KREC which gave the Kentucky Real Estate Education Foundation (the "KREEF") the right to conduct these seminars for real estate licensees. The KREEF is a non-profit, 501(c)(3) corporation. You left your position on May 15, 1996, and KREEF now wishes to hire you as its Executive Director. An opinion provided by the General Counsel of the Kentucky Association of Realtors opines that this arrangement would not violate the Code of Ethics, as the KREEF is not a "business" as defined in the Code. You ask whether this employment would violate the Code of Ethics.

KRS 11A.010(7) defines "officers" as "all major management personnel in the executive branch of state government". KRS 11A.010(1) defines a "business" as:

... any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit.

KRS 11A.040(6)(7), and (8) state:

(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

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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 taking office or beginning his term of employment, provided that, for a period of six 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.

(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.

(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.

As you were an "officer" during your tenure with state government, you are subject to KRS 11A.040(6). The Commission has stated, in Advisory Opinions 92-5 and 93-17, enclosed for your reference, that a non-profit organization is a "person or business" under this provision. The Commission believes that, even if the term "corporation" or "association" did not encompass a non-profit entity, the term "person" would encompass such an entity. As such, the provisions of KRS 11A.040(6) would apply to prohibit you from accepting employment with KREEF for six months following the termination of your employment, as this would constitute the acceptance of employment from a person or business that contracts with the state in matters in which you were directly involved, unless you were returning to the same occupation or profession.

The Commission believes that, in your employment with the KREEF, you will be returning to the same occupation or profession in which you involved prior to your tenure with the state. Therefore, you are not prohibited from accepting a position with KREEF, as long as you personally refrain from working on any matter in which you were directly involved during the last thirty-six months of your tenure with state government. However, the Commission

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believes, as you were Executive Director of the KREC, you were directly involved in all matters of the KREC, and it may be impossible for you, as the Executive Director of KREEF, to refrain from matters involving the KREC.

Additionally, you are cautioned, pursuant to KRS 11A.040(7) and (8), not to represent the KREEF in a matter in which you were directly involved as a state employee, for one year following the termination of your employment or act as a legislative agent or executive agency lobbyist during that year.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Ruth H. Baxter, Chair

Advisory Opinions 92-5 and 93-17