

ADVISORY OPINION 97-19

August 28, 1997

RE: Is engineer returning to his former profession?

DECISION: Yes.

This opinion is in response to your July 18, 1997, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 28, 1997, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are a Chief District Engineer within the Department of Highways of the Transportation Cabinet. You plan to retire from state government and would like to seek employment with an engineering firm. You ask whether you would be considered returning to your former profession.

You began work as an engineer for the state in 1973, immediately upon your graduation from the University of Kentucky's engineering program. Prior to your employment with state government, you received the designation engineer-in-training ("EIT") by passing the fundamentals portion of the professional engineering examination. You were required to complete a four-year internship before you were licensed as a professional engineer. You believe that you were in the profession of engineering prior to your state employment and thus would be returning to your former profession if you accept employment with an engineering firm.

(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.

Because you were designated by the Board of Registration for Professional Engineers and Land Surveyors as an EIT prior to your state employment, the Commission believes that you were involved in the engineering profession prior to your state employment. Thus, although you

would not be "returning to your former business, firm or occupation", you would be returning to your "former profession". Thus, you would be permitted to accept employment or compensation from a firm with which you had been directly involved during the last three years of your employment as long as you refrain, for six months, from working on any matters in which you had been directly involved.

Although you will be returning to your former profession if you accept employment as an engineer upon your retirement, the Commission advises you to uphold high standards of the public trust in your current position and not use your position in derogation of the public interest to obtain employment upon your retirement.

Furthermore, upon your retirement, you are subject to the following provisions in KRS 11A.040(7) and (8) which state:

(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.