

ADVISORY OPINION 98-5

February 26, 1998

RE: May Finance and Administration Cabinet employee provide traffic related services for firm that does business with his former employer, the Transportation Cabinet?

DECISION: Yes, but may need approval from the Commission.

This opinion is in response to your January 15, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 26, 1998, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You currently work for the Finance and Administration Cabinet, Department of Facilities Management, Division of Maintenance and Operations, and are responsible for the maintenance of the heating, air conditioning, plumbing, etc. of various state buildings. You transferred from your former position as a Transportation Engineer with the Transportation Cabinet to your current position on September 16, 1997. Your former job with the Transportation Cabinet involved traffic signals and roadway lighting design.

In addition to your employment with the Commonwealth, you now desire to seek work involving traffic design with an engineering firm that holds a contract with the Transportation Cabinet to perform traffic design work. The engineering firm also holds a contract with the Finance and Administration Cabinet, but you have no involvement with any matters involving the firm as part of your current official duties. However, you did have involvement with the firm as part of your former official duties. You ask if such outside employment would be a violation of the ethics code.

KRS 11A.020(1)(a) provides:

- 1) No public servant, by himself or through others, shall knowingly:
 - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

Since it does not appear that your current official duties with the Finance and Administration Cabinet involve any matters related to the traffic design work you are seeking, the Commission does not believe a conflict of interest will exist if you provide such work for the engineering firm. As long as you have no involvement, as part of your official duties, in matters relating to the firm with which you seek employment or any firms that may be in competition with that firm, you may seek employment with the engineering firm. However, because a business relationship exists between the Finance and Administration Cabinet and the engineering

firm, you must obtain approval from the Commission for any outside employment you seek with the firm as required by KRS 11A.040(9) which states:

(9) Without the approval of the commission, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds. The commission shall promulgate administrative regulations to establish a procedure for the approval of outside employment of a public servant, including a requirement that the public servant and his appointing authority state in writing that the public servant is not in a position to influence any agency decision relating to the outside employer.

I have included Kentucky Administrative Regulation 9 KAR 1:050 which provides guidance as to how to obtain approval for your outside employment.

If you will not be "employed" by the engineering firm, but will be a "subcontractor", you are not required to obtain the Commission's approval, but you must ascertain that no conflict of interest exists.

Since you are still a public servant, you are not subject to the "post-employment" provisions in KRS 11A.040(7) and (8).

Enclosure: 9 KAR 1:050