

## ADVISORY OPINION 98-10

February 26, 1998

RE: May Director accept employment with CPA firm immediately upon retirement?

DECISION: Yes, but must refrain, for six months, from working on matters in which he had direct involvement.

This opinion is in response to your January 26, 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 are the Director of the Division of Audits in the Cabinet for Health Services. You retired from that position on February 1, 1998, and inquire as to whether you are prohibited from accepting employment or compensation from a large national accounting firm within six months of your retirement.

The firm with which you seek employment currently does not hold a contract with the Cabinet for Health Services. However, the firm did hold a contract with the Cabinet from December 1, 1995 through June 30, 1996. You provided technical assistance to the Department of Medicaid Services during the negotiations of the contract with the four CPA firms involved. You state that you were not "directly involved" in that you did not personally work, direct or have any responsibility for the project to which the contract related. Additionally, there are no regulatory relationships between your agency and CPA firms.

In 1970, upon your graduation from college with a degree in economics and a concentration in accounting, you immediately began employment with state government as an accountant. You have worked for state government in the accounting field during your entire career. You ask the following questions:

- *Due to your involvement with the aforementioned contract, are you prohibited from working for any of the four firms for a period of six months?*
- *Since you graduated from college in the accounting field, are you allowed to return to the same business or profession in which you were involved prior to state employment without waiting six months?*
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KRS 11A.040(6) provides:

(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 involved in technical matters during the negotiations with the CPA firm that was awarded the contract with the Department, you are considered to have been directly involved in matters concerning that firm.

However, because you received a professional degree in the accounting field prior to your state employment, the Commission believes that this is the equivalent of involvement in a profession prior to your state employment. Although you would not be “returning to your former business, firm or occupation”, you would be returning to your “former profession” if you accept employment with an accounting firm. Thus, you are permitted to accept employment with or compensation from an accounting firm with which you had direct involvement during the last three years of your state employment as long as, for six months, you refrain from working on any matters in which you were directly involved during the last three years of your state tenure.

Those firms that sought to contract with the Department, but were unsuccessful, are not considered to have “done business with” the state in matters in which you were directly involved. Thus, you are not prohibited from accepting employment or compensation, within six months, from those firms that were not awarded a contract.

Additionally, 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.