

## ADVISORY OPINION 98-17

April 8, 1998

RE: May employee begin consulting business for utilities immediately upon her resignation from the Public Service Commission?

DECISION: Yes, within limitations.

This opinion is in response to your March 13, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 8, 1998, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are currently employed as a Rates and Tariffs Branch Manager by the Kentucky Public Service Commission (the "PSC"). In your position, you have no decision making authority, but you do provide recommendations on cases filed before the PSC. The branch for which you work designs rates for water and sewer utility companies under the jurisdiction of the PSC.

You are interested in opening a consulting business to prepare rate studies for utilities to file with the PSC. You hope to obtain employment elsewhere in state government until your private business is operating in the black. If you accept another position within state government, it will be in an area unrelated to utility regulation, such as with the Governmental Services Center or the Department for Information Systems. You ask how long you must wait after leaving the PSC before starting your consulting business.

KRS 11A.020(1) and (2) provide:

(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;

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

You may operate your consulting business immediately upon your termination or transfer from the PSC, provided the new position you obtain within state government does not

present a conflict with your private business. You are advised, however, not to represent a client privately against the PSC while you are still employed by the state. In Advisory Opinion 97-3 (a copy of which is enclosed), the Commission stated that representation of a client privately against another state agency might give the appearance of a conflict of interest and also may be considered an attempt to influence a public agency in derogation of the state at large. Additionally, as a state employee, you should not use your official position in any way to give yourself an advantage or privilege.

Further, when you ultimately terminate your state position, you must wait one year before representing any person or business before the PSC in matters in which you were directly involved. For example, if you had direct involvement with a particular utility during your state tenure, you should not communicate with the PSC concerning that utility for one year following your final resignation. You are not prohibited from preparing rate studies for the business to file, but are prohibited from communicating for one year with the PSC on behalf of the business.

Enclosure: AO 97-3