

**ADVISORY OPINION 98-41**

December 17, 1998

RE: May former Commissioner contract with Eastern Kentucky University upon her retirement?

DECISION: Yes.

This opinion is in response to your October 19, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 17, 1998, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You served as the Commissioner for the Department for Social Services ("DSS") from February 16, 1997 until June 30, 1998. During that time, you approved and signed a contract between the DSS and Eastern Kentucky University's Training Resource Center. However, that contract did not apply to the current fiscal year. You ask whether it would be appropriate for you, upon your retirement in February 1999, to contract with Eastern Kentucky University.

Regarding post-employment with a state university, KRS 11A.120 provides:

Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict a public servant from accepting outside employment in a state institution of higher education as long as that outside employment does not interfere or conflict with the public servant's state employment duties. Nothing in this section shall prohibit or restrict a present or former public servant from accepting employment with a state institution of higher education immediately following termination of his office or employment in another state agency.

Although you will not be employed by Eastern Kentucky University, but will be compensated through a contract, the above statute would apply because the Commission believes the legislature intended not to allow anything in KRS 11A to "prohibit or restrict" a public servant from accepting post-employment with a state institution of higher education regardless of whether or not the public servant is compensated as an employee or by contract. The Commission believes the intent of the statute is met by your acceptance of the contract with Eastern Kentucky University.

Consequently, you would not be prohibited from working for Eastern Kentucky University, under contract, immediately upon your retirement from state government. However, you should take care not to use your official position in state government to give yourself an advantage in your post-employment or you may be in violation of KRS 11A.020(1) which states:

(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.