

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 99-13**

April 13, 1999

RE:            May director accept position with the National Study of School Evaluation?

DECISION:   Not within six months of termination.

This opinion is in response to your March 20, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 13, 1999, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are the Director of Curriculum Development for the Kentucky Department of Education (the "Department"). You have applied for a position with the National Study of School Evaluation ("NSSE"), beginning July 1, 1999. The NSSE is a nonprofit organization that was founded by regional educational accrediting bureaus (e.g., Southern Association for Colleges and Schools) to provide materials and support for the bureaus. You currently serve on the board for the Alliance for Curriculum Reform (the "Alliance"), which is an alliance of national education associations, such as the National Council for the Teachers of Mathematics, National Middle School Association, and the NSSE. As a member of the Alliance, you represent the National Middle School Association, not the Department; and the National Middle School Association pays your expenses to meetings.

Previously, when you served as chair for the Alliance, you assisted the NSSE in its work with the Alliance member organizations on the development of materials to be used by regional educational accrediting bureaus in the United States. After your term as chair of the Alliance ended, you continued to work with NSSE and Alliance member organizations.

The materials developed by NSSE and Alliance member organizations were initially developed for use by regional education accrediting bureaus; however, they also are useful for schools in improving programs. Thus, the consolidated planning area within the Department became interested in learning more about these materials. This area within the Department is not under your direction, however, because you were familiar with the materials, you were asked to describe them. You consistently stated that you did not want to be a part of the decision-making process as to whether to purchase the materials for the Department.

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The Department recently purchased these materials for Regional Service Centers and Frankfort-based consultants, some of whom are within the division which you supervise, and contracted with the Executive Director of the NSSE to explain these materials to the consultants. The approval to buy these materials, and the decision as to what budget source to use to pay for them, was made by another division director within the Department, not under your direction. These materials are not available through any other source of which you are aware.

If you were to be hired by the NSSE, you would leave Kentucky and move to the Chicago area. Additionally, your new work for the NSSE would have no relationship to your current position at the Department. Your work would involve product development, research and support of schools throughout the nation in regard to accreditation. You believe that if you are hired by the NSSE, it will not be because of your position at the Department, or because of any relationship between the NSSE and the Department.

You request an opinion regarding employment with the NSSE once you leave your position with state government. Specifically, you ask whether you may accept this position within six months of leaving the Department.

KRS 11A.040(7) provides:

(7) No present or former officer or public servant listed in KRS 11A.010(9)(a) to (h) 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, or is regulated by, 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, or for which he received, prior to his state employment, a professional degree or license, 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

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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.

The Commission believes that, upon your termination from employment, you are prohibited for six months from accepting employment with the NSSE unless you are returning to your former profession or occupation. The Commission believes that the business that NSSE does with the Department involves matters in which you have been directly involved during the last three years of your tenure. Although you stated that you did not wish to be involved in any decision-making concerning the materials offered by the NSSE, because you provided an explanation and description of the materials as a part of your official duty, the Commission believes that you were directly involved in matters pertaining to the materials.

However, if you will be returning to your former occupation or profession, you may accept employment immediately with the NSSE, provided for six months you do not work on any matters (e.g., the materials) in which were directly involved during the last three years of your state tenure.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Don A. Wimberly

April 10, 2008

Ms. Elizabeth Edwards  
1221 Garvin Place  
Louisville, KY 40203

*Reference: 041399.9*

Dear Ms. Edwards:

At its April 13, 1999, meeting, the Executive Branch Ethics Commission took up your request, dated March 20, 1999, in which you ask whether a director may accept a position with the National Study of School Evaluation.

The enclosed Advisory Opinion 99-13 is issued in response to your inquiry.

Sincerely,

Jill LeMaster, Executive Director

Enclosure: AO 99-13