

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 99-18

June 8, 1999

RE: May a former director do consulting work for a subcontractor of a company that contracts with the state agency within six months of leaving state agency?

DECISION: Yes, since work for subcontractor is not related to contractor's work with the state agency and since subcontractor is not contracting with the state agency.

This opinion is in response to your May 5, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 8, 1999, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You recently retired from the Kentucky Department of Education ("KDE") where you were the Director of Curriculum Development. You have been asked to do some consulting work for a company by the name of WestEd. WestEd is a subcontractor of CTBS, the testing contractor for KDE that currently holds a contract with KDE. As part of the subcontract, WestEd works with committees of Kentucky teachers to develop test questions for the state-administered test to students. The division which you formerly headed was responsible for identifying state teachers' committees and reviewed test items and other materials for quality assurance. WestEd has asked you to do some curriculum work for them in New York on a limited consultant basis. You state that this work is not related to the subcontract that WestEd holds with CTBS or work in Kentucky.

You ask whether you may do some consulting work for WestEd within six months of leaving the KDE.

Since you are an "officer" as defined in KRS 11A.010(7), you are subject to the provisions of KRS 11A.040(6) and (7), which provide:

(6) No former officer or public servant listed in KRS 11A.010(9)(a) to (h) shall, within six (6) months of termination of his employment, knowingly by himself or through any business in which he owns

or controls an interest of at least five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he was employed. ...

(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 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 you may provide consulting work for WestEd immediately upon your retirement from KDE. Since the work you will be doing for WestEd is not related to CTBS's contract with KDE, this work is not prohibited by KRS 11A.040(6). Although you have had direct involvement with WestEd as a part of your official duties, since WestEd is not contracting or doing business with KDE directly, the consulting work is not prohibited by KRS 11A.040(7).

Additionally, for a period of one year after leaving state government, you are subject to KRS 11A.040(9) which prohibits a former public servant from representing a business before the state agency in which the former public servant was employed in matters in which the former public servant was directly involved. Since the consulting work you will be doing for WestEd will take place in New York, it does not appear that there will be any representation by you of WestEd before KDE in violation of KRS 11A.040(9).

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Don A. Wimberly

April 10, 2008

Dr. Elizabeth Edwards
1221 Garvin Place
Louisville, KY 40203

Reference: 060899.08

Dear Dr. Edwards:

At its June 8, 1999, meeting, the Executive Branch Ethics Commission took up your request, dated May 5, 1999, in which you ask whether a director may do consulting work for a subcontractor of a company that contracts with the state agency within six months of leaving the state agency.

The enclosed Advisory Opinion 99-18 is issued in response to your inquiry.

Sincerely,

Jill LeMaster, Executive Director

Enclosure: AO 99-18