

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 99-33

August 31, 1999

RE: Upon his retirement, may pharmacy technician accept employment with pharmacist who holds contract with the state agency for which the pharmacy technician formerly worked?

DECISION: Yes.

This opinion is in response to your July 7, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 31, 1999, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The institutional pharmacy at the Kentucky State Penitentiary is operated through a contract with a local pharmacist. The local pharmacist employs his own pharmacy technicians. A pharmacy technician employed by the Kentucky State Penitentiary is retiring on August 1, 1999, and wishes to work part-time for the local pharmacist. You ask for an opinion regarding this matter.

KRS 11A.040(6), (7), (8) and (9) 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. This provision shall not apply to a contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general public or that are made at public auction.

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(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.

(8) A former public servant shall not act as a lobbyist or lobbyist's principal in matters in which he was directly involved during the last thirty-six (36) months of his tenure 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.

(9) A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, 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.

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Additionally, KRS 11A.020(1)(d) provides:

(1) No public servant, by himself or through others, shall knowingly:

...

(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.

It appears from the pharmacy technician's job title that he is not an officer subject to KRS 11A.040(6) and (7). Therefore, the pharmacy technician may accept employment immediately with the pharmacist who holds a contract to provide services for the Kentucky State Penitentiary, provided he has not used his official position to give himself an advantage in violation of KRS 11A.020(1)(d).

Additionally, for one year following his retirement, the pharmacy technician may not lobby or represent any person or business before the state in matters in which he had direct involvement during the last three years of his state employment.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: CYNTHIA C. STONE
VICE CHAIR