

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 99-48**  
December 10, 1999

RE: May former employee accept employment as consultant for non-profit corporation to which he provided services as state employee?

DECISION: Yes, but for one year may not represent the company before his former state agency in matters in which he had direct involvement.

This opinion is in response to your November 3, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 10, 1999, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You retired from the Kentucky Labor Cabinet as a staff assistant to the Secretary of Labor on August 31, 1999. Your responsibilities in that position included acting as a liaison to and assisting the Kentucky Safety and Health Network, Inc. (the "Network") in performing its administrative responsibilities, and coordinating the annual Kentucky Governor's Safety and Health Conference and Exposition.

Immediately after your retirement, the President, President Elect, Secretary and Treasurer of the Network and its sister corporation, the Kentucky Safety and Health Network Foundation, Inc. (the "Foundation"), asked you if you would be interested in considering employment as a private contractor/consultant. The Network and the Foundation are private, non-profit corporations with no employees. You would perform much of the administrative role that you provided as a state employee. The services that you performed for the Network and Foundation as an employee will no longer be provided by the Labor Cabinet due to the limited manpower within the Labor Cabinet.

You ask the following question: *Are there any ethics regulations or laws which would prohibit you from accepting a contract or contracts with the Kentucky Safety and Health Network, Inc. (and Foundation) as an independent contractor to provide administrative support for the corporations(s). The responsibilities would include working with the Labor Cabinet and some of its employees, in a coordinating capacity, when it is necessary to interface with the Cabinet concerning conference issues and other areas of common concern.*

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If there is a prohibition, you ask to what extent are you limited and to what extent are you permitted to fulfill this job as an independent contractor. Finally, if a prohibition exists, you ask if your situation would fall within the exception for privatization.

KRS 11A.040(9) provides:

(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.

Because you were not employed as an “officer”, as defined in KRS 11A.010(7), you are permitted to accept employment with, or compensation from, any person or business immediately upon your retirement from state government. However, for one year, you are prohibited from representing a person or business before the state in matters in which you had direct involvement during the last three years of your state tenure. Thus, if you were to accept employment with the Network or Foundation, for one year you should not communicate, on behalf of the Network or Foundation, with the Department of Labor regarding matters in which you were directly involved, such as the safety and health conference matters.

Additionally, KRS 11A.130 provides:

11A.130 Employment of officer or public servant in privatized agency by agency's operator.

Nothing in this chapter shall be construed to prohibit an officer or public servant employed by an agency that is privatized from accepting employment from the person or business which is operating that agency if the officer or public servant was not involved in making the decision to privatize or in developing the provisions of the privatization contract.

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Although it appears that the service that you provided to the Network is no longer being provided by the Labor Cabinet, the Commission does not believe that the Labor Cabinet has privatized the service. Privatization of a state service normally involves a decision by a state agency to contract with an entity to provide a service formerly provided by the agency. It does not appear that such action has been taken. Thus, it does not appear that the privatization provision would apply in your situation.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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By Chair: Bertie Oldham Salyer, M.A., A.M.E.