



COMMONWEALTH OF KENTUCKY

EXECUTIVE BRANCH ETHICS COMMISSION

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Executive Branch Ethics Commission

ADVISORY OPINION 15-03

July 24, 2015

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EXECUTIVE DIRECTOR

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RE: May a public servant, who is not an officer, within a year after leaving state employment, provide sign language interpreter services to his former state agency while working for his new employer on a contract with his former state agency in which he was directly involved during his last thirty-six months of employment?

DECISION: Yes, with certain limitations.

This opinion is issued in response to your July 6, 2015 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). The matter was reviewed by the Commission at its meeting on July 24, 2015 and the following opinion is issued.

According to your letter, you currently are employed by the Kentucky School for the Deaf ("KSD") as an Interpreter Supervisor, a position you have held since 2012. During your tenure with KSD, you have been directly involved with a public service contract between your agency and Central Kentucky Interpreter Referral, Inc., ("CKIR") for sign language interpreting services. You have assisted in drafting the contract and setting the spending cap. You were also involved with arranging with CKIR for interpreting services at KSD proceedings, meetings and events. KSD's contract with CKIR allows KSD to use CKIR interpreting services more than \$3000 per year.

You have been offered a position as an interpreter with CKIR and would like to take the position. You are asking the Commission whether you may perform interpreting services at KSD proceedings, meetings, and events as a staff member for CKIR. You attest that you will not be representing CKIR as a participant in proceedings, meetings, and events at KSD, but merely acting as a sign-language interpreter for participants on those occasions. You specifically state that if CKIR sends you to KSD to interpret that you would simply interpret between those who are deaf and those who are not or who do not know American Sign Language. You contend that CKIR will determine where you interpret on a daily basis and that your salary will be consistent whether you are interpreting at KSD or any other location that CKIR provides services. Finally,

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you state that you did not prearrange or negotiate for employment with CKIR while you were still a state employee.

As an interpreter supervisor you do not fulfill the definition of an “officer” as defined in KRS 11A.010(7). As such you are not covered by the post-employment provisions contained in KRS 11A.040(6) and (7). As such, you may go to work directly for an entity that your former state agency regulated or did business with provided that you have not used your position with KSD to give yourself an advantage in any way in obtaining such employment. Such use of one’s official position to obtain an advantage in obtaining future employment could be in violation of KRS 11A.020(1)(d) provided below:

(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.

Because you are not an officer, the only post employment provisions that apply to you are contained in KRS 11A.040(8) and (9), which provide as follows:

(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.

“Represent” is defined in KRS 11A.010(17) to mean “attend a proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else.” As provided in Advisory Opinion 07-33 (a copy of which is enclosed), you may not represent your new employer before the state in any matter with which you had direct involvement during the last three years of your tenure with KSD.

The Commission has determined that you may immediately work on the CKIR contract with KSD as an interpreter as long as your attendance at the proceedings requiring your interpreting services does not require you to take part as a participant in the proceedings on behalf of CKIR before KSD. However, due to your involvement with the contract during the last thirty-six months of your tenure with KSD, for one year after you leave employment, you

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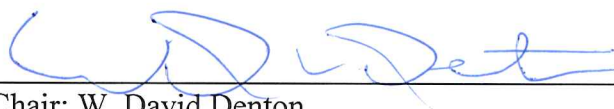
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should exercise caution in that your participation in any such meetings, events, or proceedings does not amount to “representing” CKIR regarding the contract. Furthermore, for one year, you should not have any communications with employees of KSD regarding the implementation of the contract with CKIR.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: W. David Denton

Attachments:

Advisory Opinion 07-33

Leaving State Government pamphlet