



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION

JUDGE ROGER L. CRITTENDEN (RET.)
CHAIR

SEN. DAVID K. KAREM (RET.)
VICE CHAIR

CRIT LUALLEN
JUSTICE DANIEL J. VENTERS (RET.)
DAVID S. SAMFORD

CAPITAL COMPLEX EAST
1025 CAPITAL CENTER DRIVE, SUITE #104
FRANKFORT, KY 40601
(502) 564-7954
FAX: (502)-695-5939
[HTTPS://ETHICS.KY.GOV/](https://ethics.ky.gov/)

KATHRYN H. GABHART
EXECUTIVE DIRECTOR

MICHAEL W. BOARD
GENERAL COUNSEL

SUCHETA MEENA MOHANTY
DEPUTY GENERAL COUNSEL

Executive Branch Ethics Commission
ADVISORY OPINION 21-05
May 19, 2021

- RE:** 1) May a public servant in a non-officer position accept employment with a company that has a contract with his former agency without violating the post-employment provisions contained in KRS 11A.040(6)-(9)?
- 2) May a public servant in a non-officer position serve as an expert witness for his former agency through a contract with his new employer, who has other current contracts with the former agency?

- DECISION:** 1) Yes, within limitations.
- 2) Yes, within limitations.

This opinion is issued in response to your April 14, 2021, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 19, 2021 meeting of the Commission and the following opinion is issued pursuant to KRS 11A.110(1).

You originally sought a staff opinion from the Commission's staff on March 1, 2021. Commission staff issued an informal opinion to you on March 5, 2021. You request a formal advisory opinion from the Commission as an assurance that you are following the correct course of action in your post-employment conduct. You advised Commission staff that you intend to resign from your position as a Transportation Engineer Supervisor with the Kentucky Transportation Cabinet (KYTC) and accept a position with a company that currently has contracts with KYTC. You seek advice as to the application of the post-employment provisions contained in KRS 11A.040(6) through (9) to your intended post-employment conduct.

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In your position as Transportation Engineer Supervisor for the (KYTC), you are not considered to be in an “officer” position pursuant to KRS 11A.010(7). As such, the only post-employment provisions that apply during your first year post-employment are contained in KRS 11A.040(8) and (9). These paragraphs state:

(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

Your prospective employer currently has contracts with KYTC; however, not any of those contracts are with the district in which you currently work. Additionally, you have not worked on any contracts or matters involving your prospective employer during your service with the state.

It is perfectly acceptable for you as a former non-officer to accept immediate employment with your prospective employer as long as you abide by the provisions of KRS 11A.040(8) and (9) listed above for a period of one year from your last date of service with the Commonwealth. These provisions mean that you cannot *lobby on behalf of, or represent*, your prospective employer before the Executive Branch related to any matters for which you were directly involved during the previous thirty-six (36) months of your employment at the Commonwealth for a period of one (1) year after you leave state employment.

KRS 11A.201 defines a “lobbyist” as a person who is engaged or paid by a client to lobby on its behalf. KRS 11A.010 (17) defines “represent” to mean “to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else.” “Directly involved” is defined in KRS 11A.010(18) to mean “to work on personally or to supervise someone who works on personally.” The Commission has defined the term “matter” to mean “any measurable case, litigation, decision, grant, proceeding,

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application, determination, contract, claim, investigation, charge, or legislative bill.” 9 KAR 1:025, Section 1(4). Therefore, you may not lobby on behalf of or represent your prospective employer before the Commonwealth related to any ongoing old matters that you worked on while working at KYTC. However, you would not be prohibited from lobbying on behalf of or representing your prospective employer before the Executive Branch related to any new matters during your first year post-employment.

Based on the information you have provided, you indicated that you have not worked on any matters involving your prospective employer while working for KYTC during the last three (3) years you have worked for the state. As such, you should not have any restrictions in working for your prospective employer or having communications with KYTC.

You also asked whether you could contract through your prospective employer to provide expert testimony for KYTC in condemnation matters that may occur after you leave state service. In light of the previous analysis, the Commission determines that you are not limited in the contacts that you may have with KYTC on behalf of your prospective employer. Therefore, the Executive Branch Code of Ethics does not prohibit your prospective employer from entering into such an agreement with KYTC for you to provide expert testimony. The Commission further recommends that the KYTC Office of Legal Services be consulted concerning any such contracts to determine whether provisions outside of the Executive Branch Code of Ethics would apply.

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By Chair Judge Roger L. Crittenden (Ret.)