

**COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
CASE NO. 14-08**

**IN RE: RACHEL AUXIER
ALLEGED VIOLATION OF KRS CHAPTER 11A**

**INITIATING ORDER
Initiation of Administrative Proceeding
And Formal Complaint**

The Executive Branch Ethics Commission (the "Commission"), upon its own motion, initiated a preliminary investigation of Rachel Auxier (the "Respondent" or "Auxier"), pursuant to KRS 11A.080(1), on July 30, 2013.

At all relevant times the Respondent was a "public servant" as defined in KRS 11A.010(9), and thus subject to the jurisdiction of the Commission.

The Commission initiated the preliminary investigation to determine whether it has sufficient probable cause to believe the Respondent violated provisions of KRS Chapter 11A, Executive Branch Code of Ethics (also referred to herein as the "Ethics Code").

The Commission focused its investigation upon the Respondent's possible violation of the Ethics Code by using her influence in matters that involved a substantial conflict between her personal or private interest and her duties in the public interest; influencing a public agency in derogation of the state at large; and using her official position to give her family member financial gain; using her official position to secure or create privileges, exemptions, advantages, or treatment for others in derogation of the public interest; failing to avoid all conduct which might in any way lead members of the general public to conclude that she was using her official position to further her professional or private interest.

The Commission notified the Respondent of the preliminary investigation by letter dated July 31, 2013. During the course of the investigation, the Commission found probable cause to believe that violations of KRS Chapter 11A had occurred and voted on January 27, 2014, to initiate an administrative proceeding, pursuant to KRS 11A.080(4)(b) and KRS Chapter 13B, to determine whether the Respondent violated the Ethics Code as set forth in the Allegations of Violations, attached hereto and incorporated fully herein as Appendix A to this Initiating Order.

IT IS THEREFORE ORDERED that:

1. This Initiating Order and Appendix shall be served on the Respondent pursuant to KRS 13B.050(2) by certified mail, return receipt requested, to the last known address of the Respondent.
2. The Respondent shall file her answer to this Initiating Order within twenty (20) days from the date of service, verifying the truth and accuracy of any answer submitted.
3. The Respondent shall appear at a hearing to be scheduled by subsequent order and be prepared to defend against the Commission's allegations that she committed the Ethics Code violations set forth in the Allegation of Violations, attached hereto and incorporated fully herein as Appendix A to this Initiating Order.
4. The Commission will request the designation of a Hearing Officer by the Administrative Hearings Branch of the Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.
5. The Commission is represented by Kathryn H. Gabhart, General Counsel, and John R. Steffen, Executive Director and co-Counsel. They may be contacted through

the Commission's office at (502) 564-7954.

6. All original material shall be submitted to the Executive Branch Ethics Commission, #3 Fountain Place, Frankfort, Kentucky 40601. A copy of all materials shall be served on the designated Hearing Officer.

7. The Respondent has the right to legal counsel during this proceeding. If the Respondent retains legal counsel, that person shall file an appearance with the Commission, and thereafter all correspondence from the Commission to the Respondent shall be mailed or delivered to the Respondent's attorney.

8. The Respondent has the right to examine upon request, at least five (5) days prior to the hearing, a list of witnesses the Commission expects to call at the hearing, any evidence that will be used at the hearing and any exculpatory information in the Commission's possession.

9. The Respondent has the right to subpoena witnesses on her own behalf. If the Respondent subpoenas witnesses, she shall pay for all costs associated with the subpoenas' issuance, including any applicable witness fees.

10. If the Respondent fails to attend or participate as required at any stage of the administrative hearing process without good cause shown, she may be held in default pursuant to KRS 13B.050(3)(h).

11. The Respondent has a right to appeal any final Commission order to the Franklin Circuit Court within thirty (30) days of service.

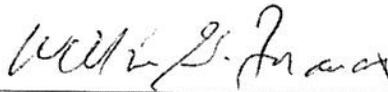
12. This proceeding is subject to KRS Chapter 11A, the Commission's regulations, the provisions of KRS Chapter 13B, and any Order issued by the Commission or its hearing officer issued during this administrative proceeding.

So ordered this 27th day of January 2014.

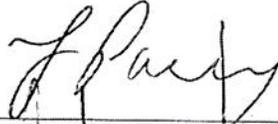
EXECUTIVE BRANCH ETHICS COMMISSION:



W. David Denton, Chair



William G. Francis, Vice-Chair



Lewis G. Paisley, Member



Richard L. Masters, Member



Martin E. Johnstone, Member

**APPENDIX A
CASE NO. 14-08
INITIATING ORDER**

ALLEGATION OF VIOLATIONS

The Respondent, Rachel Auxier, was at all relevant times an employee of the Commonwealth of Kentucky, serving in the Cabinet for Health and Family Services. As such, the Respondent was subject to the jurisdiction of the Commission. KRS 11A.010(9)(h).

During the course of its preliminary investigation, the Commission found probable cause to believe that Rachel Auxier committed the following violations:

COUNT I

Rachel Auxier, during her course of employment as the Director, Department for Income Support, Cabinet for Health and Family Services, used her influence in matters that involved a substantial conflict between her personal or private interest and her duties in the public interest; influenced a public agency in derogation of the state at large; used her official position to give her family member financial gain; used her official position to secure or create privileges, exemptions, advantages, or treatment for others in derogation of the public interest; and failed to avoid all conduct which might in any way lead members of the general public to conclude that she was using her official position to further her professional or private interest.

Specifically, in 2012, Auxier used her position to have her agency do business with a business owned and operated by her husband to provide catering for an event being held by her Department before any of the estimates were gathered. Auxier had her subordinate staff gather estimates from entities of her choosing, including her husband's business, and to create documentation to show that her husband's business was the lowest estimate gathered.

These facts constitute violations of KRS 11A.020(1)(a), (b), (c), and (d), and KRS 11A.020(2).

KRS 11A.020(1)(a), (b), (c), and (d), and (2) provide:

- (1) No public servant, by himself or through others, shall knowingly:
 - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family;
or
 - (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.
- (2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

COUNT II

Rachel Auxier, during her course of employment as the Director, Department for Income Support, Cabinet for Health and Family Services, used her influence in matters that involved a substantial conflict between her personal or private interest and her duties in the public interest; influenced a public agency in derogation of the state at large; used her official position to give her family member financial gain; used her official position to secure or create privileges, exemptions, advantages, or treatment for others in derogation of the public interest; and failed to avoid all conduct which might in any way lead members of the general public to conclude that she was using her official position to further her professional or private interest.

Specifically, in 2012, Auxier participated in every aspect of the process to ensure that her Department contracted with her husband's business to provide catering for an event being held by her Department. Auxier used her position to have her upper management involved in the approval process believe that her husband's business was the lowest estimate and the only option

to provide the catering for the event. Further, Auxier signed the documentation approving her husband's business to provide catering for the event.

These facts constitute violations of KRS 11A.020(1)(a), (b), (c), and (d), and KRS 11A.020(2).

KRS 11A.020(1)(a), (b), (c), and (d), and (2) provide:

- (1) No public servant, by himself or through others, shall knowingly:
 - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family;
or
 - (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.
- (2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

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