COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
CASE NO. 14-004

IN RE: BENJAMIN T. KINMAN
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 Benjamin T. Kinman (the "Respondent"), pursuant to KRS 11A.080(1), on July 30, 2013, and expanded its investigation on September 9, 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, the 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 his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest; influencing a public agency in derogation of the state at large; using his official position to give himself a financial gain and an advantage in derogation of the public interest at large; using his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest; and failing to avoid all conduct which might in any way lead members of the general public to conclude that he was

using his official position to further his professional or private interest.

The Commission notified the Respondent of the preliminary investigation by letter dated August 1, 2013, and of the expanded investigation on September 11, 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 his 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 he 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 his own behalf. If the Respondent subpoenas witnesses, he 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, he 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. 14-004
INITIATING ORDER

ALLEGATION OF VIOLATIONS

The Respondent, Benjamin T. Kinman, was at all relevant times an employee of the Commonwealth of Kentucky, serving in the Department of Fish and Wildlife Resources ("Department"), Tourism, Arts and Heritage Cabinet. As such, the Respondent is 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 Benjamin T. Kinman committed the following violations:

COUNT I

Benjamin T. Kinman, during his course of employment as the Deputy Commissioner of the Department of Fish and Wildlife Resources, Tourism, Arts and Heritage Cabinet, influenced a public agency in derogation of the state at large; and used his official position to secure or create privileges, exemptions, advantages, or treatment for others in derogation of the public interest.

Specifically, in the winter of 2009 through 2010, Kinman used his position to instruct Department employees, who were working on state time and using Department equipment and vehicles, to pump out the flooded basement or crawl space of then Commissioner Jonathan Gassett's personal residence.

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

KRS 11A.020(1)(b) and (d) provide:

> (1) No public servant, by himself or through others, shall knowingly:
> (b) Use or attempt to use any means to influence a public agency in derogation of the state at large; 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.

COUNT II

Benjamin T. Kinman, during his course of employment as the Deputy Commissioner of the Department of Fish and Wildlife Resources, Tourism, Arts and Heritage Cabinet, influenced a public agency in derogation of the state at large; and used his official position to secure or create privileges, exemptions, advantages, or treatment for others in derogation of the public interest.

Specifically, in the Spring of 2013, Kinman used his position to have a Department employee, working on state time and using a Department vehicle, deliver fish from the Department's fish hatchery to a private pond located on the personal property of a member of the Kentucky Fish and Wildlife Commission in Somerset, Kentucky. The fish were provided to the Commission member outside of the provisions of any statute or regulation and would not have been made available to members of the general public.

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

KRS 11A.020(1)(b) and (d) provide:

> (1) No public servant, by himself or through others, shall knowingly:
> (b) Use or attempt to use any means to influence a public agency in derogation of the state at large; 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.

COUNT III

Benjamin T. Kinman, during his course of employment as the Deputy Commissioner of the Department of Fish and Wildlife Resources, Tourism, Arts and Heritage Cabinet, influenced a public agency in derogation of the state at large; and used his official position to secure or create privileges, exemptions, advantages, or treatment for others in derogation of the public interest.

Specifically, in the fall of 2012 and the spring of 2013, Kinman used his position, at the request of a member of the Kentucky Fish and Wildlife Commission, to deliver fish from the

Department's fish hatchery to a private pond located in Lawrenceburg, Kentucky, on the personal property of a friend of the Commission member. Kinman delivered the fish himself in the fall of 2012. Kinman instructed Department employees, working on state time and using a Department vehicle, to make the fish delivery in the spring of 2013. The fish were provided to the friend of the Commission member outside of the provisions of any statute or regulation and would not have been made available to members of the general public.

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

KRS 11A.020(1)(b) and (d) provide:

> (1) No public servant, by himself or through others, shall knowingly:
> (b) Use or attempt to use any means to influence a public agency in derogation of the state at large; 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.

COUNT IV

Benjamin T. Kinman, during his course of employment as the Deputy Commissioner of the Department of Fish and Wildlife Resources, Tourism, Arts and Heritage Cabinet, influenced a public agency in derogation of the state at large; and used his official position to secure or create privileges, exemptions, advantages, or treatment for others in derogation of the public interest.

Specifically, in the Spring of 2013, Kinman used his position, at the request of then Commissioner Jonathan Gassett, to have Department employees acquire a gallon of the controlled chemical Rotenone, that was originally purchased by the Department through a Department contract, from the Department's stores for Gassett's personal use. The Rotenone Gassett used could only be purchased by a certified individual. Neither Kinman nor Gassett maintained the appropriate certification to purchase or use Rotenone at the time.

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

KRS 11A.020(1)(b) and (d) provide:

> (2) No public servant, by himself or through others, shall knowingly:
> (b) Use or attempt to use any means to influence a public agency in derogation of the state at large; 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.

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