COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
CASE NO. 14-002

IN RE: GARY GARDNER
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 Gary Gardner (the "Respondent"), pursuant to KRS 11A.080(1), on November 15, 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; 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; and knowingly

receiving, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.

The Commission notified the Respondent of the preliminary investigation by letter dated November 20, 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. 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.

2. 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.

3. A Hearing Officer will be designated by the Administrative Hearings Branch of the Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.

4. 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.

5. 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 at the Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.

6. 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.

7. 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.

8. 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.

9. 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).

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

11. 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 E. Masters, Member

Martin E. Johnstone, Member

APPENDIX A
CASE NO. 14-002
INITIATING ORDER

ALLEGATION OF VIOLATIONS

The Respondent, Gary Gardner, was at all relevant times an employee of the Commonwealth of Kentucky, serving in the Department of Juvenile Justice, Justice and Public Safety Cabinet. 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 Gary Gardner committed the following violations:

COUNT I

Gary Gardner, during his course of employment as a Fiscal Manager of the Lincoln Village Detention Center, Department of Juvenile Justice, Justice and Public Safety Cabinet, used his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest; influenced a public agency in derogation of the state at large; used his official position to give himself a financial gain and an advantage in derogation of the public interest at large; used his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest; failed 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; and knowingly received, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.

Specifically, during 2006 through 2012, Gardner used a credit card belonging to the facility for personal use without the consent of the facility. Gardner spent approximately $2650 on items for his personal use with the facility credit card.

These facts constitute violations of KRS 11A.020(1)(a), (b), (c), and (d), KRS 11A.020(2), and KRS 11A.040(2).

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

> (1) No public servant, by himself or through others, shall knowingly:
> (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.

KRS 11A.020(2) provides:

> (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.

KRS 11A.040(2) provides:

> (2) A public servant shall not knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.

COUNT II

Gary Gardner, during his course of employment as a Fiscal Manager of the Lincoln Village Detention Center, Department of Juvenile Justice, Justice and Public Safety Cabinet, used his official position to obtain financial gain for himself, and to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest at large.

Specifically, between 2006 and 2012, Gardner took approximately $650 from the sale of meal tickets at the facility for his own personal use.

These facts constitute violations of KRS 11A.020(1)(a), (b), (c), and (d), KRS 11A.020(2), and KRS 11A.040(2).

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

> (1) No public servant, by himself or through others, shall knowingly:

(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.

KRS 11A.020(2) provides:

(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.

KRS 11A.040(2) provides:

(2) A public servant shall not knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.

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