

**COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
CASE NO. 15-015**

**IN RE: GEORGE SMITHERS
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 George Smithers (the “Respondent” or “Smithers”), pursuant to KRS 11A.080(1), on March 23, 2015.

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 his influence in matters 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 or a family member a financial gain; using his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others 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 March 26, 2015. During the course of the investigation, the Commission found probable cause

to believe that violations of KRS Chapter 11A had occurred and voted on July 24, 2015, 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. Pursuant to KRS 13B.030(2)(b), 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. If the Attorney General's Office cannot provide the requested hearing officer, the Commission will, pursuant to KRS 13B.030(2)(a), employ a hearing officer, contract with another agency for a hearing officer in conjunction with KRS 11A.070, or contract with a private attorney through a personal services contract. The Commission will notify the Respondent or his retained counsel of the designation of a Hearing Officer as soon as possible after the appointment.

6. The Commission is represented by Kathryn H. Gabhart, Interim Executive

Director and General Counsel of the Executive Branch Ethics Commission. She may be contacted through the Commission's office at (502) 564-7954.

7. All original material shall be submitted to the Executive Branch Ethics Commission, #3 Fountain Place, Frankfort, Kentucky 40601, Attention: Debbie Briscoe. A copy of all materials shall be served on the designated Hearing Officer and the Commission's counsel.

8. 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.

9. 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.

10. 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.

11. 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).

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

13. 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 24th day of July 2015.

EXECUTIVE BRANCH ETHICS COMMISSION:



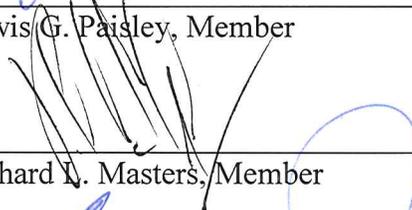
W. David Denton, Chair



William G. Francis, Vice-Chair



Lewis G. Paisley, Member



Richard L. Masters, Member



Martin E. Johnstone, Member

**APPENDIX A
CASE NO. 15-015
INITIATING ORDER**

ALLEGATION OF VIOLATIONS

The Respondent, George Smithers, was at all relevant times an employee of the Commonwealth of Kentucky, serving at Hazelwood Center, Cabinet for Health and Family Services (the "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 George Smithers committed the following violations:

COUNT I

George Smithers, during his course of employment as a Facility Services Supervisor/Acting Director of Residential Services, Hazelwood Center, Cabinet for Health and Family Services, used or attempted 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; used or attempted to use any means to influence a public agency in derogation of the state at large; used his official position to give himself a financial gain; used his official position to secure or create privileges, exemptions, advantages, or treatment for himself 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 he was using his official position to further his professional or private interest.

Specifically, between December 2014 through March of 2015, Smithers used the facilities at Hazelwood Center for his own private photography business. Smithers held photography sessions in a vacant room of one of the buildings in the Hazelwood Center complex, setting up a photography studio with his private photography equipment and props. Smithers then posted the photographs, some of which show features of the Hazelwood building in which he took the

photographs, on his business's internet site.

Smithers used his position and access to Hazelwood for use in his personal business resulting in Smithers receiving financial gain, benefits, and advantages in derogation of the public interest. By Smithers using the Hazelwood facility for his private business, he failed to avoid conduct that would lead the general public to conclude that he was using his official position to further his private interest.

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) 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.

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.

COUNT II

George Smithers, during his course of employment as a Facility Services Supervisor/Acting Director of Residential Services, Hazelwood Center, Cabinet for Health and Family Services, used or attempted 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; used or attempted to use any means to influence a public agency in derogation of the state at large; used his official position to give himself a financial gain; used his official position to secure or create privileges, exemptions, advantages, or treatment for himself 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 he was using his official position to further his professional or private interest.

Specifically, between December 2014 through March of 2015, Smithers used his position and access to employees at Hazelwood Center for his own private photography business. Smithers used his influence over employees he supervised to solicit employees to participate in private photography sessions to create modeling portfolios for the employees. Smithers would advertise his personal photography business to employees participating in the new employee orientation and other training classes that he was supervising and conducting.

Smithers used his position and access to Hazelwood employees to solicit employees while on state to participate in his private business resulting in Smithers receiving financial gain, benefits, and advantages in derogation of the public interest. By Smithers soliciting Hazelwood employees while on state time for his private business, he failed to avoid conduct that would lead the general public to conclude that he was using his official position to further his private interest.

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) 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.

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.

COUNT III

George Smithers, during his course of employment as a Facility Services Supervisor/Acting Director of Residential Services, Hazelwood Center, Cabinet for Health and Family Services, used or attempted 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; used or attempted to use any means to influence a public agency in derogation of the state at large; used his official position to give himself a financial gain; used his official position to secure or create privileges, exemptions, advantages, or treatment for himself 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 he was using his official position to further his professional or private interest.

Specifically, during his course of employment with the Cabinet, Smithers used the Cabinet resources, including his computer equipment, for his own private businesses. Smithers used the Cabinet computers and equipment to complete invoices and send emails during state time relating to his photography business, his home restoration and remodeling business, his wedding photography and entertainment business, his mobile training business, and his tax service.

Smithers used his position, state time, and access to Hazelwood equipment for use in his personal businesses resulting in Smithers receiving financial gain, benefits, and advantages in derogation of the public interest. By Smithers using the Hazelwood facility, equipment, and time for his private businesses, he failed to avoid conduct that would lead the general public to conclude that he was using his official position to further his private interest.

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) 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.

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.

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