

**COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
CASE 13-013**

**IN RE: THOMAS BURLING
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 Thomas Burling (the “Respondent”), pursuant to KRS 11A.080(1), on May 20, 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 there was probable cause to believe the Respondent violated provisions of KRS Chapter 11A (also referred to herein as the “Ethics Code”).

The Commission focused upon the Respondent’s possible violation of the Ethics Code by using his official position with the Kentucky Transportation Cabinet to use or attempt to use any means to influence his agency in derogation of the state at large; to give himself financial gain and advantages and privileges for himself in derogation of the state at large; failing to avoid conduct which might in any way lead members of the general public to conclude that he was using his official position further his professional or private interest; and knowingly receiving, directly or indirectly, 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 May 14, 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 September 9, 2013, 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 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.

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. 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 which 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 9th day of September, 2013.

EXECUTIVE BRANCH ETHICS COMMISSION:



W. David Denton, Chair



William G. Francis, Vice-Chair



Lewis G. Paisley, Member



Richard L. Masters, Member

Absent

Martin E. Johnstone, Member

**APPENDIX A
CASE NO. 13-013
INITIATING ORDER**

ALLEGATION OF VIOLATIONS

The Respondent, Thomas Burling, was at all relevant times an employee of the Commonwealth of Kentucky, serving in the Kentucky Transportation Cabinet (also referred to herein as “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 Thomas Burling committed the following violation:

COUNT I

That Thomas Burling, former Highway Superintendent II with the Kentucky Transportation Cabinet, used his official position to use or attempt to use any means to influence his agency in derogation of the state at large; to give himself financial gain and advantages and privileges for himself in derogation of the state at large; failed to avoid 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, interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.

Specifically, Burling, used his position to gain access to property owned by the Cabinet and property owned by a Cabinet contractor for the purposes of hauling that property to a scrap yard and selling this property for his own personal financial benefit or gain. The property included corrugated metal pipe, rebar, metal pipes, aluminum cans, tires, double-mesh wire, scrap metal, road sign poles, SuperNails, steel sheets, chain-link fence, and a metal hose reel.

These facts constitute a violation of KRS 11A.020(1), KRS 11A.020(2), and KRS 11A.040(2).

KRS 11A.020(1)(b), (c), and (d) provides:

- (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.
 - (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, an 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

That Thomas Burling, former Highway Superintendent II with the Kentucky Transportation Cabinet, used his official position to use or attempt to use any means to influence his agency in derogation of the state at large; to give himself financial gain and advantages and privileges for himself in derogation of the state at large; failed to avoid 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, interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.

Specifically, Burling, used his position to misuse his Cabinet-issued ProCard to purchase items for his own personal use or that he otherwise kept for himself for personal gain or benefit. These items included floor mats and an orbital sander and accessories. Burling entered false information into the Cabinet's ProCard system to cover up his activities.

These facts constitute a violation of KRS 11A.020(1), KRS 11A.020(2), and KRS 11A.040(2).

KRS 11A.020(1)(b), (c), and (d) provides:

- (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.
 - (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, an interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.

COUNT III

That Thomas Burling, former Highway Superintendent II with the Kentucky Transportation Cabinet, used his official position to use or attempt to use any means to influence his agency in derogation of the state at large; to give himself financial gain and advantages and privileges for himself in derogation of the state at large; failed to avoid conduct which might in

any way lead members of the general public to conclude that he was using his official position further his professional or private interest; and knowingly received, directly or indirectly, interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.

Specifically, Burling used an open Cabinet charge account to purchase items for his own personal use. Burling also took cleaning supplies and toilet paper from the facility for his personal use and enjoyment as well.

These facts constitute a violation of KRS 11A.020(1), KRS 11A.020(2), and KRS 11A.040(2).

KRS 11A.020(1)(b), (c), and (d) provides:

- (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.
 - (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, an interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.

COUNT IV

That Thomas Burling, former Highway Superintendent II with the Kentucky

Transportation Cabinet, used his official position to use or attempt to use any means to influence his agency in derogation of the state at large; and to give himself financial gain and advantages and privileges for himself in derogation of the state at large.

Specifically, Burling misused inmates, whom he was charged with supervising, by having these inmates perform unauthorized work on private property for activities not related to work for the Cabinet, but for his own private enterprise. Burling further gave these inmates the proceeds from the sale of Cabinet scrap metal that they had collected and he sold.

These facts constitute a violation of KRS 11A.020(1).

KRS 11A.020(1)(b), (c), and (d) provides:

- (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.
 - (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.

COUNT V

That Thomas Burling, former Highway Superintendent II with the Kentucky Transportation Cabinet, used his official position to use or attempt to use any means to influence his agency in derogation of the state at large; to give himself financial gain and advantages and privileges for himself in derogation of the state at large; and failed to avoid 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, Burling, falsified his timesheets and failed to carry out assignments as directed by his supervisors. Burling further directed a subordinate to falsify his timesheets.

These facts constitute a violation of KRS 11A.020(1) and KRS 11A.020(2).

KRS 11A.020(1)(b), (c), and (d) provides:

- (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.
 - (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 VI

That Thomas Burling, former Highway Superintendent II with the Kentucky Transportation Cabinet, used his official position to use or attempt to use any means to influence his agency in derogation of the state at large; to give himself financial gain and advantages and privileges for himself in derogation of the state at large; and failed to avoid conduct which might in any way lead members of the general public to conclude that he was using his official position further his professional or private interest.

Specifically, Burling used state time, state-owned vehicles, and Department equipment for his personal use both during and after working hours.

These facts constitute a violation of KRS 11A.020(1) and KRS 11A.020(2).

KRS 11A.020(1)(b), (c), and (d) provides:

- (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.

- (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 VII

That Thomas Burling, former Highway Superintendent II with the Kentucky Transportation Cabinet, used his official position to use or attempt to use any means to influence his agency in derogation of the state at large; to give himself financial gain and advantages and privileges for himself in derogation of the state at large; and failed to avoid conduct which might in any way lead members of the general public to conclude that he was using his official position further his professional or private interest.

Specifically, Burling falsified his application for employment for a promotion to Highway Superintendent II when he stated that he had not been previously convicted of a felony offense.

These facts constitute a violation of KRS 11A.020(1) and KRS 11A.020(2).

KRS 11A.020(1)(b), (c), and (d) provides:

- (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.
 - (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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