

**COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
CASE 07-115**

**IN RE: RICHARD L. MURGATROYD
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 Richard L. Murgatroyd (the "Respondent"), pursuant to KRS 11A.080(1), on March 30, 2005. The scope of this investigation was expanded at the Commission's May 27, 2005, meeting.

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 following possible violations of the Ethics Code in the course of its investigation:

1. The Respondent's possible use of his official position to give others an advantage in obtaining jobs within the classified (merit) system in derogation of the public interest at large;
2. The Respondent's possible involvement in personnel matters that posed a conflict between his private interest and his duties in the public interest; and
3. The Respondent's possible attempt to influence a public agency in personnel matters in derogation of the state at large.

The Commission notified the Respondent of the preliminary investigation by letters dated April 1, April 22, and June 3, 2005. During the course of the investigation, the Commission found probable cause to believe that violations of KRS Chapter 11A had occurred and voted on October 19, 2007, 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. All material submitted to the Commission shall be addressed to the Executive Branch Ethics Commission, The Vest-Lindsey House, 401 Wapping Street, Frankfort, Kentucky 40601. The Commission is represented by John R. Steffen, General Counsel, who may be contacted through the Commission's office at (502) 564-7954.
4. 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.
5. 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.

6. 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.

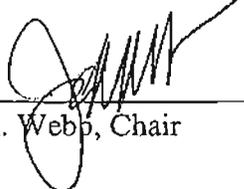
7. If the Respondent fails to attend or participate as required at any stage of the administrative hearing process without good cause shown, he may be held in default pursuant to KRS 13B.050(3)(h).

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

9. 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 19th day of October, 2007.

EXECUTIVE BRANCH ETHICS COMMISSION:

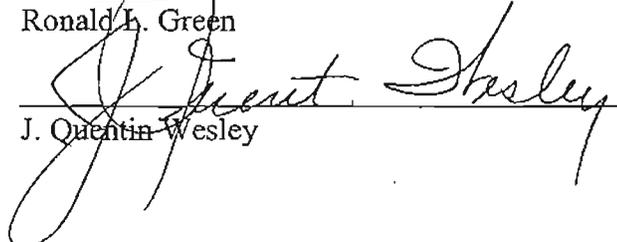


John A. Webb, Chair

E. Patrick Moores, Vice-Chair



Ronald L. Green



J. Quentin Wesley

**APPENDIX A
CASE NO. 07-115
INITIATING ORDER**

ALLEGATION OF VIOLATIONS

The Respondent, Richard L. Murgatroyd, was at all times relevant an employee of the Commonwealth of Kentucky, serving as the Deputy Secretary of the Transportation Cabinet. The Respondent was subject to the jurisdiction of the Commission at all relevant times. KRS 11A.010(9)(h).

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

COUNT I

Murgatroyd violated KRS 11A.020(1)(a) and (b) by using or attempting to use his official position to facilitate the transfer and demotion of Terry McKinney, a state classified (merit) system employee of the Transportation Cabinet, without cause, based on Mr. McKinney's political affiliation or opinion, and his past political positions. Such action presented a substantial conflict between Murgatroyd's personal political interests and his duty in the public interest in disregard of the statutes and regulations governing the merit hiring system.

KRS 11A.020(1)(a) and (b) 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;

COUNT II

Murgatroyd violated KRS 11A.020(1)(a) and (b) by using or attempting to use his official position to precipitate the retirement of Scotty Fugate, a state classified (merit) system employee of the Transportation Cabinet, by means of a temporary assignment, for the purpose of making Mr. Fugate's merit position available to an individual who supported, and was recommend by supporters of, the political agenda of the current administration. Such action presented a substantial conflict between Murgatroyd's personal political interests and his duty in the public interest in disregard of the statutes and regulations governing the merit hiring system.

KRS 11A.020(1)(a) and (b) 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;

COUNT III

Murgatroyd violated KRS 11A.020(1)(a), (b), and (d) by using or attempting to use his official position to influence a public agency in the promotion of Billy Montgomery to a state classified (merit) system position in the Transportation Cabinet and give Mr. Montgomery an advantage over other more qualified individuals based on Mr. Montgomery's political views and support of the current administration rather than his qualifications. Such action presented a substantial conflict between Murgatroyd's personal political interests and his duty in the public interest in disregard of the statutes and regulations governing the merit hiring system.

KRS 11A.020(1)(a), (b), 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;

...

(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

Murgatroyd violated KRS 11A.020(1)(a), (b), and (d) by using or attempting to use his official position to influence a public agency by creating a state classified (merit) position in the Transportation Cabinet identical to the position already held by James Maggard and then appointing Maggard to that new position without considering any other candidates in order to circumvent the merit system and give Maggard a higher salary. Such action presented a substantial conflict between Murgatroyd's personal political interests and his duty in the public interest in disregard of the statutes and regulations governing the merit hiring system.

KRS 11A.020(1)(a), (b), 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;

...

(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

Murgatroyd violated KRS 11A.020(1)(a), (b), and (d) by using or attempting to use his official position to influence a public agency in the appointment of Marjorie Ann Stewart to a state classified (merit) system position in the Transportation Cabinet and give Ms. Stewart an

advantage over other more qualified individuals based solely on Ms. Stewart's political activities as a campaign manager for the current administration rather than her qualifications. Such action presented a substantial conflict between Murgatroyd's personal political interests and his duty in the public interest in disregard of the statutes and regulations governing the merit hiring system.

KRS 11A.020(1)(a), (b), 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;

...

(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 VI

Murgatroyd violated KRS 11A.020(1)(a) and (b) by using or attempting to use his official position to facilitate the transfer of Jerry Gritton, a state classified (merit) system employee of the Transportation Cabinet, without cause, for the purpose of creating a vacant position to ultimately be filled by a family member of a strong supporter of the political agenda of the current administration. Such action presented a substantial conflict between Murgatroyd's personal political interests and his duty in the public interest in disregard of the statutes and regulations governing the merit hiring system.

KRS 11A.020(1)(a) and (b) 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;

COUNT VII

Murgatroyd violated KRS 11A.020(1)(a), (b), and (d) by using or attempting to use his official position to influence a public agency in the appointment of Tony Disponett based on his family relationship to a strong supporter of the political agenda of the current administration, rather than his qualifications, to a state classified (merit) system position in the Transportation Cabinet. Such action presented a substantial conflict between Murgatroyd's personal political interests and his duty in the public interest in disregard of the statutes and regulations governing the merit hiring system.

KRS 11A.020(1)(a), (b), 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;

...

(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 VIII

Murgatroyd violated KRS 11A.020(1)(a), (b), and (d) by using or attempting to use his official position to influence a public agency in the appointment of James Gray based on his family relationship to a high ranking state official, rather than his qualifications, to a state

classified (merit) system position in the Transportation Cabinet created for this purpose. Such action presented a substantial conflict between Murgatroyd's personal political interests and his duty in the public interest in disregard of the statutes and regulations governing the merit hiring system.

KRS 11A.020(1)(a), (b), 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;
 - ...
 - (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 IX

Murgatroyd violated KRS 11A.020(1)(b) and (d) by using or attempting to use his official position to influence a public agency and to give advantages to certain individuals in derogation of the public interest at large by facilitating the systematic preselection or approval of individuals, based on private political interests rather than qualifications, and directing that they be placed in merit system positions or promoted with disregard to personnel statutes or regulations governing the merit system hiring procedures.

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;

...

(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 X

Murgatroyd violated KRS 11A.020(1)(a) by placing private political interests above his duties as an employee of the Commonwealth of Kentucky when he facilitated the hiring, appointment, promotion, demotion, or transfer of individuals based on political considerations rather than qualifications. Such action presented a substantial conflict between Murgatroyd's personal political interests and his duties in the public interest.

KRS 11A.020(1)(a) provides:

(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;

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