

SETTLEMENT AGREEMENT

This agreement is made and entered into between the Executive Branch Ethics Commission (hereinafter the "Commission") and Michael Fitzgerald.

WHEREAS, this agreement involves the matter styled *Executive Branch Ethics Commission v. Michael Fitzgerald*, Agency Case No. 12-006;

WHEREAS, the Commission is designated by statute as the agency responsible for enforcing the Executive Branch Code of Ethics, KRS Chapter 11A;

WHEREAS, on September 24, 2012, the Commission alleged facts in an Initiating Order that Michael Fitzgerald violated the Executive Branch Code of Ethics at KRS 11A.020(1)(a), (b), (c) and (d) and KRS 11A.020(2);

WHEREAS, Michael Fitzgerald was at all relevant times mentioned in the Initiating Order a "public servant" as defined in KRS 11A.010(9), and thus is subject to the Executive Branch Code of Ethics; and

WHEREAS, Michael Fitzgerald indicates his desire to resolve all issues in this action by the execution of a Settlement Agreement.

NOW, THEREFORE, in settlement of the above allegations, the Commission and Michael Fitzgerald agree, pursuant to KRS 11A.100, as follows:

1. Michael Fitzgerald admits that he committed violations of the Executive Branch Code of Ethics at KRS 11A.020(1)(a), (b), (c) and (d) and KRS 11A.020(2) as stated in Appendix A of the Commission's Initiating Order of September 24, 2012, attached hereto and incorporated by reference herein, as relate to the allegations presented in Counts II through VII and IX.

2. The Commission agrees to amend the allegations as stated in Appendix A to the Commission's Initiating Order of September 24, 2012, attached hereto, as relates to the allegations presented in Count I as follows:

a. The Commission redacts and removes the following sentence from the second paragraph of Count I: "Fitzgerald used this private company to certify his private organic farm located in Henry County, Kentucky."

b. The Commission replaces the above-referenced sentence in the second paragraph of Count I with the following sentence: "Fitzgerald used this private company to certify his private organic tobacco grown on his farm located in Henry County, Kentucky."

3. The Commission agrees to amend the allegations as stated in Appendix A to the Commission's Initiating Order of September 24, 2012, attached hereto, as relates to the allegations presented in Count VIII as follows:

a. The Commission redacts and withdraws the language in the second paragraph of Count VIII that states: "Fitzgerald either forged or ensured the forgery of the signature of his supervisor on certificates that were issued to out-of-state organic product producers certified by the Organic Program, for which he maintained responsibility, in matters in which he had also performed the private inspections for a fee."

b. The Commission inserts the language as follows in the second paragraph of Count VIII: "Fitzgerald wrote the signature of his supervisor on certificates issued through the Organic Program in order to create an erroneous impression or a false inference in the minds of the recipients of those certificates that his supervisor had indeed signed the certificates. These certificates were presented to organic product buyers on behalf of organic producers certified through the Organic Program that Fitzgerald himself had inspected for a private fee."

4. Michael Fitzgerald admits that he committed violations of the Executive Branch Code of Ethics at KRS 11A.020(1)(a), (c) and (d) as stated in Count I as it was amended by paragraph 2b of this Settlement Agreement

5. Michael Fitzgerald admits that he committed violations of the Executive Branch Code of Ethics at KRS 11A.020(1)(a), (b), (c) and (d) as stated in Count VIII as it was amended by paragraph 3b of this Settlement Agreement.

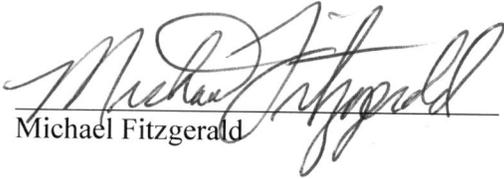
6. Michael Fitzgerald agrees to pay the Commission a civil penalty of ten thousand dollars (\$10,000.00) on or before November 30, 2012.

7. Michael Fitzgerald agrees that upon the Commission accepting the Settlement Agreement and entering the Final Order that he waives all rights to any further administrative process or appeal pursuant to KRS 13B.140 thereon.

8. The parties further agree that the acceptance of this Settlement Agreement by both parties, and the fulfillment of its express terms, is in full accord and satisfaction of the herein referenced *Executive Branch Ethics Commission v. Michael Fitzgerald*, Agency Case No. 12-006.

9. This Settlement Agreement constitutes a public reprimand to Michael Fitzgerald, a copy of which will be provided to his former appointing authority pursuant to KRS 11A.100(3)(c).

IN WITNESS THEREOF, the respondent has caused this agreement to be executed:

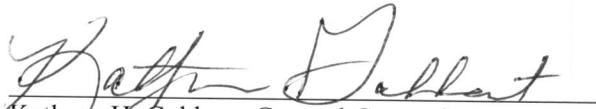

Michael Fitzgerald


Date

Seen and Agreed by:

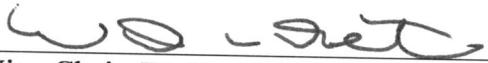

Robert V. Bullock,
Attorney for Michael Fitzgerald

Prepared by:


Kathryn H. Gabhart, General Counsel,
Executive Branch Ethics Commission

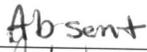
WHEREFOR, the EXECUTIVE BRANCH ETHICS COMMISSION has approved and executed this settlement agreement.

ENTERED: December 3, 2012


Vice-Chair, W. David Denton


Member, William Francis


Member, Lewis G. Paisley


Member, Martin E. Johnstone


Member, Richard L. Masters

**APPENDIX A
CASE NO. 12-006
INITIATING ORDER**

ALLEGATION OF VIOLATIONS

The Respondent, Michael Fitzgerald, was at all relevant times an employee of the Commonwealth of Kentucky, serving in the Department of Agriculture. 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 Michael Fitzgerald committed the following violations:

COUNT I

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, used his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest; used his official position to give himself a financial gain and an advantage in derogation of the public interest at large and used his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest.

Specifically, during January, February and March 2012, Fitzgerald used his state-issued email account and Department letterhead to endorse a private company to provide organic certification inspections and services to out-of-state organic product producers for which the Department chose to no longer provide such services on January 17, 2012. Fitzgerald used this private company to certify his private organic farm located in Henry County, Kentucky. Fitzgerald also used his endorsement of this private company to support his solicitation of said producers for his business of conducting private inspections and to generate business for the private company for which he sought to serve as an independent contractor.

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

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

- (1) No public servant, by himself or through others, shall knowingly:
 - (a) Use his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest;

 - (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 II

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, used his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest; used his official position to give himself a financial gain and an advantage in derogation of the public interest at large and used his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest.

Specifically, during 2010, 2011, and 2012, Fitzgerald, during time he was working for the Department, used his state-issued email account and state-issued cell phone to solicit and to arrange dates and times that he would perform inspections for out-of-state organic product producers.

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

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

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

- (a) Use his influence in a matter that involved a substantial conflict between his personal or private interest and his duties in the public interest;

- (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 III

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, 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; 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 2010 through 2011, Fitzgerald, performed inspections at the locations of out-of-state organic product producers, which was outside of his regular job duties, while collecting a private fee, while oftentimes on state time and driving a state vehicle.

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 IV

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, 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; and used his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest.

Specifically, during 2010 through 2011, Fitzgerald used a state vehicle for no apparent work-related reason. Fitzgerald cited on the vehicle sign out logs that he was taking a state vehicle to perform "inspections," but performed no corresponding inspections either for out-of-state or in-state organic product producers and did not create any corresponding inspection records indicating that he had conducted such inspections during that year. Fitzgerald also cited

using the state vehicle to perform specific in-state inspections that were never actually performed and no record was generated to indicate an inspection was ever conducted.

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

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.

COUNT V

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, 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; 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 2010 and 2011, Fitzgerald performed private inspections for out-of-state organic product producers who had also requested to be certified by the Organic Program for which he was responsible, but Fitzgerald failed to ensure that these same producers' applications received the appropriate first review, final review or certificate, which was part of his job duties with the Department.

Such conduct resulted in no oversight of Fitzgerald's privately conducted inspections, could have resulted in the Department issuing certificates that would not otherwise of been issued, and jeopardized the validity of the certificates that were issued by the Department in derogation of the state and public 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 VI

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, 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; 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 2010 and 2011, Fitzgerald conducted the first review, final review, and signed the certificate for organic product producers despite having the responsibility as supervisor of the Organic Program to ensure that at least two individuals performed such functions as required by the federal rules applicable to the organic certification. Fitzgerald also performed the private inspections for these producers and accepted fees for performing the inspections.

Such conduct resulted in no oversight of Fitzgerald's privately conducted inspections, could have resulted in the Department issuing certificates that would not otherwise of been issued, and jeopardized the validity of the certificates that were issued by the Department in derogation of the state and public 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 VII

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, 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; 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 2010 and 2011, Fitzgerald submitted inspection reports to the Organic Program for private inspections that he claimed to have performed and had garnered a fee for performing for out-of-state organic product producers that he had not actually performed, could not have physically completed in the time allotted, or for which he performed insufficient

and incomplete inspection reports. Fitzgerald's deficient inspection reports for the out-of-state producers influenced his Department to issue certificates to producers that might not have otherwise received certification had proper inspections been completed in derogation of the public 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 VIII

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, 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; and used his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest.

Specifically, during 2010 and 2011, Fitzgerald either forged or ensured the forgery of the signature of his supervisor on certificates that were issued to out-of-state organic product producers certified by the Organic Program, for which he maintained responsibility, in matters in which he had also performed the private inspections for a fee.

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

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

- (2) No public servant, by himself or through others, shall knowingly:
 - (c) 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;
 - (d) 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 IX

Michael Fitzgerald, during his course of employment as the Agriculture Marketing Supervisor over the Organic Program with the Department of Agriculture, 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; and used his official position to secure or create privileges, exemptions,

advantages, or treatment for himself in derogation of the public interest.

Specifically, in 2011, Fitzgerald sold hay from his personal organic farm to an organic product producer certified under the Department's Organic Program, for which he maintained responsibility, and to which he had issued a Notice of Noncompliance a few months prior.

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

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

- (3) No public servant, by himself or through others, shall knowingly:
 - (e) 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;
 - (f) 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.

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