

COMMONWEALTH OF KENTUCKY

**EXECUTIVE BRANCH  
ETHICS COMMISSION**



**BIENNIAL REPORT**

**JULY 1, 2007 - JUNE 30, 2009**

*Printed with State Funds*  
2009

# EXECUTIVE BRANCH ETHICS COMMISSION

## BIENNIAL REPORT

FISCAL YEARS ENDING JUNE 30, 2008 AND 2009

### COMMISSION MEMBERS

Gwendolyn R. Pinson  
Chairperson, elected July 11, 2008

Ronald L. Green  
Vice-Chair, elected July 11, 2008

Angela Edwards

Jeanie Owen Miller

Nicholas Patrick Cambron

Cynthia C. Stone  
(Member through July 24, 2007)

John A. Webb  
(Member through July 14, 2008)

E. Patrick Moores  
(Member through July 14, 2008)

J. Quentin Wesley  
(Member through November 16, 2008)

### STAFF

John R. Steffen, Executive Director

Dana Nickles, General Counsel

Jeffrey M. Jett, Investigator

Debbie Briscoe, Executive Assistant

Bill Trigg, Staff Assistant

Jenny May, Administrative Assistant

*Jill LeMaster, Executive Director (through May 31, 2008)*

*Daphne Criscillis, Executive Assistant (through July 15, 2008)*

*Rebecca Goodman, Interim General Counsel (May 1, 2008 through January 31, 2009)*

#3 Fountain Place  
Frankfort, Kentucky 40601  
(502) 564-7954  
FAX (502) 564-2686

<http://ethics.ky.gov/>

*The Executive Branch Ethics Commission's goal is to promote the ethical conduct of state officials and employees and to ensure proper regulation of executive agency lobbyists and their employers. This report covers the activities of the Ethics Commission during the fiscal years ended June 30, 2008, and June 30, 2009 as required by KRS 11A.110(13). It is intended to serve as a guide to the responsibilities of the Commission and as a record of its major activities and decisions during the biennium.*





COMMONWEALTH OF KENTUCKY

## EXECUTIVE BRANCH ETHICS COMMISSION

<http://ethics.ky.gov/>

GWEN R. PINSON  
CHAIR

RONALD L. GREEN  
VICE-CHAIR

NICK CAMBRON

ANGELA LOGAN EDWARDS

JEANIE OWEN MILLER

JOHN R. STEFFEN  
EXECUTIVE DIRECTOR

#3 FOUNTAIN PLACE  
FRANKFORT, KY 40601  
(502) 564-7954  
FAX: (502) 564-2686

DANA COX NICKLES  
GENERAL COUNSEL

November 17, 2009

To the Legislative Research Commission  
Governor Steve Beshear  
Citizens of the Commonwealth of Kentucky

On behalf of the Kentucky Executive Branch Ethics Commission and its staff, I am pleased to submit the Commission's Biennial Report for the fiscal years ending June 30, 2008 and June 30, 2009. The purpose of our Biennial Report is to summarize the work of the Commission during this two-year period.

The Commission, an independent body of five citizen members from various regions throughout the Commonwealth, is charged with promoting ethical conduct within the Executive Branch of Kentucky's government. The Commission is supported by an experienced and dedicated staff consisting of an Executive Director, General Counsel, Investigator (part-time), Executive Assistant, Administrative Assistant, Staff Assistant (part-time) and Student Interns. In fulfilling its mission, the Commission promotes and enforces the Executive Branch Ethics Code, KRS Chapter 11A, in various ways, including the provision of ethics training to Executive Branch officials, departments and divisions; issuance of ethics opinions for guidance to Executive Branch employees and citizens who deal with Executive Branch agencies; review of financial disclosure statements filed pursuant to the requirements of the Code; and administrative action. Also, in each legislative session since 1993, the Commission has teamed with legislators to propose amendments which would strengthen and clarify the existing Ethics Code. In fact, a large portion of the Commission's proposed legislation, which dealt with policy-making and regulatory boards and commissions, was implemented by Governor Beshear in May of 2008 when he issued Executive Order 2008-454.

As you can see from the report that follows, the Commission has a proven record of successfully carrying out its charge. The Commission is committed to continuing to promote the highest ethical standards among members of the Executive Branch as it has every year since its creation. We respectfully request the continued support of the Commonwealth of Kentucky, its elected officials and its citizens for it is only with this support that the Commission can continue its important work.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gwen R. Pinson".

Gwen R. Pinson, Chair  
Executive Branch Ethics Commission



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# **INTRODUCTION TO THE COMMISSION**

## **AUTHORITY**

The Executive Branch Code of Ethics (code of ethics) created by Kentucky Revised Statutes (KRS) Chapter 11A, effective July 14, 1992, established the ethical standards that govern the conduct of all executive branch employees. The code of ethics was enacted to restore and promote public trust in the administration of the government of the Commonwealth and its employees. It has been amended numerous times in an attempt to improve its application. The Executive Branch Ethics Commission, authorized by KRS 11A.060, is an independent agency of the Commonwealth that is responsible for administering and enforcing the provisions of the code of ethics.

## **VISION**

Our vision for the future is one in which the leaders of the Commonwealth have integrity and honesty, and serve the people of the Commonwealth in an independent and impartial manner while upholding the public trust in all areas of their public service and private lives.

## **MISSION STATEMENT**

The mission of the Executive Branch Ethics Commission is to promote the ethical conduct of elected officials, officers and other employees in the executive branch of state government, thereby increasing the public trust in the administration of state government.

## **THE COMMISSION SEEKS TO FULFILL ITS MISSION THROUGH:**

- ◆ Education of state employees and lobbyists;
- ◆ Guidance to state employees concerning their ethical conduct, including the issuance of advisory opinions;
- ◆ Investigation of possible violations and enforcement of the provisions of the code of ethics;
- ◆ Financial disclosure by state officers and elected constitutional officials;
- ◆ Regulation of executive agency lobbyists; and
- ◆ Improvements to the code of ethics.

## COMMISSION MEMBERS

The Commission is composed of five members appointed by the Governor to serve four-year terms. Beginning in May 2008, the Governor, on a rotating basis, appoints one commissioner directly, then appoints one from a list of three names submitted to him by the Attorney General, then appoints one from a list of three names submitted to him by the Auditor of Public Accounts, after which the process repeats itself. The following individuals served on the Commission during the biennium.



### **CYNTHIA C. STONE**

Governor Paul E. Patton appointed Ms. Stone July 23, 1996, to a four-year term of office expiring July 14, 2000. Ms. Stone was elected Vice Chair of the Commission on August 31, 1999. Governor Patton subsequently reappointed Commissioner Stone to a second term ending July 14, 2004. She was elected Chair August 10, 2001. While Ms. Stone resigned her position January 28, 2003, she was appointed on November 19, 2003 to a new four-year term which ended July 14, 2007. She was elected Vice Chair on September 30, 2004.

Formerly a partner in the law firm of Stone, Pregliasco, Haynes, Buba in Louisville, Kentucky, Ms. Stone is now busy in real estate ventures. She received her undergraduate and graduate degrees from the University of Louisville.



### **JOHN A. WEBB**

Governor Ernie Fletcher appointed Mr. Webb on October 20, 2004 to a vacated seat. His term expired on July 14, 2008. He was elected Chair of the Commission on September 2, 2005.

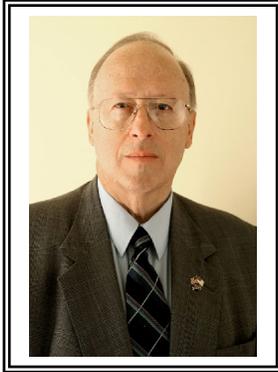
An attorney in Ashland, Kentucky, Mr. Webb is a partner in the firm of McKenzie, Woolery & Webb. He earned a degree in political science at Georgetown College and his law degree at the University of Louisville.



### **J. QUENTIN WESLEY**

Governor Ernie Fletcher appointed Mr. Wesley on August 22, 2005 to replace James Willhite, whose term had expired. Mr. Wesley's term would have ended July 14, 2009, but he resigned early, on November 16, 2008.

Mr. Wesley graduated and earned his law degree at the University of Kentucky. A former State Representative and Captain of the U.S. Air Force Reserves, he makes his home in Morganfield, Kentucky.



### **E. PATRICK MOORES**

Governor Ernie Fletcher appointed Mr. Moores on December 14, 2006 to the unexpired term of Ray Altman, who had resigned. Mr. Moores's term expired July 14, 2008.

Mr. Moores graduated from the University of Kentucky and earned his law degree at Cumberland School of Law of Samford University. Mr. Moores is a self-employed attorney and makes his home in Nicholasville, Kentucky.



### **RONALD L. GREEN**

Governor Ernie Fletcher appointed Mr. Green on July 15, 2007 to replace Cindy Stone, whose term had expired. Mr. Green's term will expire on July 14, 2011. He was elected Vice Chair of the Commission on July 11, 2008.

An Attorney in Lexington, Kentucky, Mr. Green is a partner in the firm of Boel, Stopher & Graves, LLP. He earned a degree in Economics at Murray State University and his law degree at the University of Kentucky.



### **GWENDOLYN R. PINSON**

Governor Ernie Fletcher appointed Ms. Pinson on December 6, 2007 to the unexpired term of Thomas Handy, who had resigned. Ms. Pinson shall serve the remainder of the unexpired term which ends July 14, 2010. She was elected Chair of the Commission on July 11, 2008.

An attorney in Lexington, Kentucky, Ms. Pinson works for Dinsmore and Shohl, LLP. Ms. Pinson earned a degree in Accounting at Morehead State University and her law degree at the University of Kentucky.



### **JEANIE OWEN MILLER**

Governor Steven L. Beshear appointed Ms. Owen Miller on July 24, 2008 to a four-year term that will expire July 14, 2012. Ms. Owen Miller was appointed under the requirements of Executive Order 2008-454 from a list of nominees submitted to the Governor by the Attorney General.

Jeanie Owen Miller is an attorney in Owensboro, Kentucky where she has been in private practice for 24 years. She received her Bachelor of Arts, Masters of Public Administration, and Juris Doctorate from the University of Kentucky.



### **ANGELA L. EDWARDS**

Governor Steven L. Beshear appointed Ms. Edwards to replace Rutherford B. Campbell, Jr., who had been appointed on July 24, 2008, but resigned on September 23, 2008 prior to being sworn in. Ms. Edwards will serve the remainder of the unexpired term, ending July 14, 2012. Ms. Edwards was appointed under the requirements of Executive Order 2008-454 from a list of nominees submitted to the Governor by the Auditor of Public Accounts.

An attorney in Louisville, Kentucky, Ms. Edwards is a partner in the firm of Woodward, Hobson & Fulton, LLP. Ms. Edwards earned a degree in Finance at Transylvania University and her law degree at the University of Kentucky.



### **NICHOLAS PATRICK CAMBRON**

Governor Steven L. Beshear appointed Mr. Cambron to replace J. Quentin Wesley, who resigned on November 16, 2008. Mr. Cambron will serve the remainder of the unexpired term ending July 14, 2009.

Mr. Cambron is a Kentucky licensed real estate agent with the firm Audubon Realty located in Owensboro, Kentucky. He has served on the Owensboro Metropolitan Planning Commission, Greater Owensboro Chamber of Commerce and C-LINK Chamber Leadership Initiatives for North Western Kentucky.

## STAFF

The Commission employs a full-time staff who may be contacted by anyone seeking information or advice relating to the code of ethics, or wishing to provide information regarding an alleged violation of the Executive Branch Code of Ethics. The staff provides state employees, executive agency lobbyists and the public with information, guidance and training aimed at promoting ethical conduct of executive branch employees. The following individuals served as staff to the Commission during the biennium.

### EXECUTIVE DIRECTOR

The Executive Director is responsible for all administrative, Investigative and legal activity of the Commission, education and training of employees, audit of disclosure statements, development of all publications, as well as the supervision of the staff.

**Jill LeMaster** (*Retired May 31, 2008*)

### GENERAL COUNSEL

The General Counsel advises the Executive Director on legal issues, assists in training and in the administration of the agency, coordinates investigations, handles administrative proceedings and civil litigation, and, in the absence of the Executive Director, assumes the Executive Director's responsibilities.

**John Steffen** (*Became Executive Director June 16, 2008*)

**Becky Goodman** (*Interim General Counsel May 1, 2008 through January 31, 2009*)

### INVESTIGATOR

The Investigator is responsible for conducting all preliminary investigations initiated by the Commission.

**JOHN STEFFEN**



**DANA NICKLES**



**JEFFREY JETT**



## SUPPORT STAFF

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The support staff manages daily operations of the office and safeguards documents on file with the Commission. They facilitate coordination of the many requests for information and advice that are presented to the staff.

The **Executive Assistant** manages advisory opinion requests as well as processes personnel matters. This position also acts as Clerk of the Administrative Proceedings process. The Executive Assistant serves as Secretary for Commission meetings, which includes preparing the agenda and minutes following the meeting.

**Daphne Criscillis** (*Resigned July 15, 2008*)

The **Administrative Assistant** manages the process for registration and reporting for executive agency lobbyists and their employers. She maintains the database for both executive agency lobbyists and ethics training participants and keeps statistical information for the biennial report. Other duties include processing purchases and billings for the agency, records retention liaison, updating the agency's website and publications, and responding to open records requests, orders for printed materials and general inquiries regarding the Commission and its work.

The **Staff Assistant** administers the statement of financial disclosure filing process and related database for constitutional officers and other government officials. He also assists the Executive Assistant and Administrative Assistant as needed.

The **Student Interns** assist the staff with a variety of assignments ranging from processing mail to database work. Student Interns who served the Commission during some part of the biennium include:

**ASHLEY WADE**  
**JESSICA BIRD**

*(no photos available)*

**MOLLY ATZINGER**  
**MEGAN HALL**

**DEBBIE BRISCOE**



**JENNY MAY**



**BILL TRIGG**



**LIVINGSTON TAYLOR ETHICS AWARD**

Livingston Taylor, a former investigative reporter for the Courier-Journal, served as the Commission’s first chairman from 1992-1995. Mr. Taylor was responsible for the early direction of the Commission and donated a considerable amount of time and effort in leading the Commission. Mr. Taylor declined any compensation for his efforts. He set the tone for the Commission with his concern that the Commission be politically independent and show no favoritism. His substantial contribution to promoting the ethical conduct of executive branch employees will long be remembered. The Executive Branch Ethics Commission and the Commonwealth of Kentucky are better off because of his volunteer service.

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State employees are often only recognized for inappropriate behavior. Thus, the Commission wishes to offer some positive reinforcement through this award by recognizing those who work hard and ethically for the taxpayers of Kentucky.

The recipient of this biennial award, Jill LeMaster, became the first Executive Director of the Executive Branch Ethics Commission in 1993, a position in which she remained until her

retirement on May 31, 2008. Throughout her time with the Commission, Jill worked tirelessly and unceasingly to promote ethics in state government, always doing so with fairness and impartiality. Without her hard work, the Commission would not be what it is today. She truly built the agency from scratch.

While Jill's accomplishments in the field of ethics were many during her 15 years as Executive Director, during the biennium she was instrumental in Governor Beshear's issuance of Executive Order 2008-454. After fighting hard, to no avail, for the passage of HB 250, which would have brought numerous improvements to the Ethics Code, Jill worked with the Governor to accomplish some of those important changes by Executive Order. Of these changes, the most significant (and the most important to Jill) was the change to the appointment process for members of the Ethics Commission. Rather than the Governor having complete control over the appointment process, under the Executive Order the appointments rotate so that the Attorney General and the Auditor of Public Accounts participate in the process as well. Also of great significance was the inclusion in the Executive Order of language applying ethics requirements for the first time to the members of over 70 state regulatory and policy-making boards and commissions. This would never have happened if not for the efforts of Jill LeMaster.

Even after retirement Jill continued to promote ethics in state government by entering into a personal services contract with the Personnel Cabinet for the purpose of providing ethics training to employees of the executive branch. Jill had always placed particular emphasis on training, believing it to be the key to assuring ethical standards are maintained. The Governor's Executive Order had instituted mandatory ethics training for major management personnel. With the Commission short-staffed at the time, it was only natural for Jill to step in to provide such training. As always, her training was thorough, well-prepared, and specially tailored to meet the needs and requirements of each specific agency or group of employees in attendance. In addition to her regular training, Jill also put together an online training course.

During her time as Executive Director, Jill made significant, demonstrable, and positive contributions in the field of ethics. She did so on a daily basis, even after her retirement. She spearheaded Executive Order 2008-454, which did more to promote honesty and integrity within the executive branch of state government than had been accomplished by legislation in many years. Most of what she accomplished over the years she did single-handedly or with the help of her small (albeit extremely dedicated and capable) staff on a shoe-string budget. But she did it all with an unwavering dedication to always doing the right thing. Her service embodies the vision that Livingston Taylor had for promoting the ethical conduct of the employees of the Commonwealth.

The Commission hopes that Jill's honesty and integrity during her 15 years as Executive Director of the Executive Branch Ethics Commission serve as an example to all employees in the Commonwealth of Kentucky.

# BUDGET

## TWO-YEAR BUDGET ANALYSIS

The Commission's budget and expenditures for fiscal years 2007-08 and 2008-09 are detailed below.

	<u>FISCAL YEAR</u>		<u>TOTAL FOR</u>
	<u>2007-08</u>	<u>2008-09</u>	<u>BIENNIUM</u>
<b>ALLOTMENTS</b>			
General Fund	\$448,500	\$448,500	\$897,000
Agency Fund	<u>56,135</u>	<u>53,561</u>	<u>109,696</u>
<b>TOTAL</b>	<u>\$504,635</u>	<u>\$502,061</u>	<u>\$1,006,696</u>
<b>EXPENDITURES</b>			
Personnel Costs	\$431,835	\$412,293	\$844,128
Operating Expenses	62,800	55,267	118,067
Budget Adjustment	10,000	0	10,000
Grants, Loans & Benefits	0	40	40
Capital Outlay	<u>0</u>	<u>0</u>	<u>0</u>
<b>TOTAL</b>	<u>\$504,635</u>	<u>\$467,600</u>	<u>\$972,235</u>
<b>ALLOTMENT OVER EXPENDITURES</b>			
Reverted to general fund	\$ 0	\$ 0	\$ 0
Retained in agency fund	<u>436</u>	<u>34,461</u>	<u>34,897</u>
<b>TOTAL</b>	<u>\$ 436</u>	<u>\$ 34,461</u>	<u>\$ 34,897</u>

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<b>REVENUE FROM EMPLOYERS OF EXECUTIVE AGENCY LOBBYISTS</b>		
	<b>2007-2008</b>	<b>2008-2009</b>
EMPLOYER REGISTRATION FEES (AGENCY FUND REVENUE)	\$50,125	\$53,125
LOBBYISTS FINES (GENERAL FUND REVENUE)	\$3,000	0
<b>TOTAL COLLECTED</b>	<b>\$53,125</b>	<b>\$53,125</b>

<b>REVENUE FROM CIVIL PENALTIES ISSUED</b>		
	<b>2007-2008</b>	<b>2008-2009</b>
FINES FROM CURRENT AND FORMER EMPLOYEES (GENERAL FUND)	\$7,000	\$6,900
<b>TOTAL COLLECTED</b>	<b>\$7,000</b>	<b>\$6,900</b>

## EDUCATION

The Commission continues to believe that its primary goal is to educate employees in an effort to improve honesty and integrity in state government. Through education, the Commission seeks to prevent rather than punish ethics violations. Employee education is a multi-faceted effort consisting of responses to inquiries, training classes, a web site, agency ethics officers, publications, and newsletter articles.

## INQUIRIES

The Commission considers and responds to all inquiries from persons requesting information or advice on any aspect of the code of ethics. Such inquiries are made in person, by mail, through e-mail, or by telephone. Commission staff resolves the majority of these requests after reviewing the statutes and advisory opinions. In some instances, the staff recommends that advice be sought from the Commission through its advisory opinion process (see page 14).

The staff of the Commission meets individually with state officials, employees, and lobbyists to provide information or explanation concerning the code of ethics. The staff also provides guidance by telephone and e-mail on a daily basis in response to state official, employee, and citizen inquiries.

During fiscal year 2007-2008, the staff provided advice to approximately 1064 individuals and to approximately 786 persons during fiscal year 2008-2009. The following table shows, by subject matter, the approximate number of recorded inquiries received during the biennium.

SUBJECT MATTER	NUMBER OF INQUIRIES	
	2007-08	2008-09
Advisory Opinions	43	35
Campaign Activity	18	10
Complaints	43	22
Conflict of Interest	98	93
Executive Agency Lobbying	154	142
Financial Disclosure	243	143
General Information	104	68
Gifts	95	54
Investigations	50	39
Legislation	22	27
Litigation	5	15
Code of Ethics for Boards and Commissions	3	47
Outside Employment	33	20
Post-employment	87	30
Request for Material	17	11
Training	<u>49</u>	<u>30</u>
<b>TOTAL</b>	<b>1064</b>	<b>786</b>

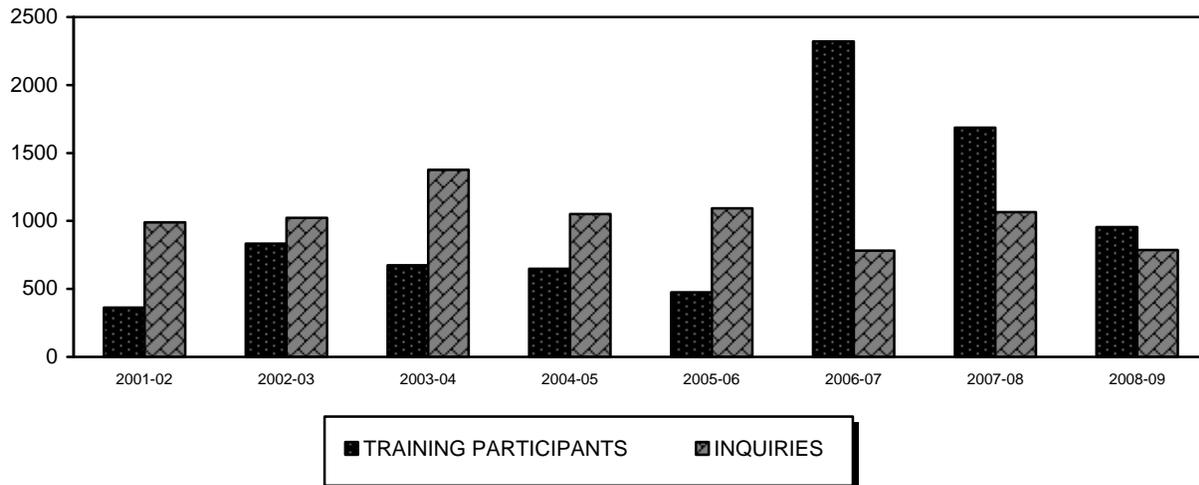
## TRAINING CLASSES

The Executive Branch Ethics Commission offers ethics classes on a regular basis through the Governmental Services Center, the training branch for state government. In addition, ethics classes are provided to individual state agencies as requested, as well as to lobbyists and other organizations.

NUMBER OF:	2007-08	2008-09	TOTAL
Training Classes Provided for State Agencies	34	7	41
Training Classes Provided for Boards and Commissions Members	0	2	2
Training Sessions Provided by Personal Service Contract	0	26	26
Training Sessions Provided to Ethics Officers	0	1	1
Training Sessions Provided for Lobbyist/Other Organizations	2	1	3
<b>TOTAL TRAINING CLASSES</b>	<b>36</b>	<b>37</b>	<b>73</b>

<u>Total Number of Participants Trained</u>	
2007-2008	1687
2008-2009	955
<b>Total</b>	<b>2642</b>

### Comparison of Contacts 2001-2009



## WEBSITE

The Commission's home page can be found at <http://ethics.ky.gov/>. The web site provides information on Commission members and staff, advisory opinions, lobbying, training, post-employment laws, ethics officers, and financial disclosure. Many of the publications produced by the Commission are available to the general public from the website including the employee *Guide to the Executive Branch Code of Ethics*, as well as the text of the Executive Branch Code of Ethics, KRS Chapter 11A, Title 9 of the Administrative Regulations and Executive Order 2008-454.

The screenshot shows the homepage of the Executive Branch Ethics Commission (EBEC) website. The header features the Kentucky state seal and the text "Executive Branch Ethics Commission" on a dark blue background. Below the header is a navigation bar with "Home" and a search box. The main content area is divided into several sections:

- Home**: A vertical sidebar menu on the left with links to "Commission Members & Staff", "Ethics Officers", "Guide to the Executive Branch Code of Ethics", "Advisory Opinions", "Executive Agency Lobbying", "Training", "Publications", "Statements of Financial Disclosure", "Acceptance of Gifts", "Leaving State Government?", "Ethical Guidelines for Members of Executive Branch Boards and Commissions", "Comments & Suggestions", and "Related Links".
- Welcome to the New Web Site of the EBEC!**: A central heading.
- Authority**: A section explaining the enabling statute (Chapter 11A) and the Code of Ethics, including a link to Executive Order 2008-454.
- Function and Mission**: A section detailing the Commission's mission to promote ethical conduct, with a bulleted list of functions: administering training, providing guidance, enforcing provisions, interpreting the code, registering lobbyists, and recommending legislation.
- Next Meeting**: A sidebar box announcing a meeting on Friday, November 13, 2009, with a cut-off date for advisory opinion requests on October 30, 2009.
- Upcoming Ethics Training**: A sidebar box listing training sessions on October 22, 2009, and November 17, 2009, both at the Transportation Cabinet Conference Center.
- Ethics Officer Training**: A sidebar box listing training on November 17, 2009, at the Transportation Cabinet Conference Center.
- Contact Information**: A sidebar box providing contact details for John R. Steffen, Executive Director, including his address and phone number.

The footer of the page shows the browser's address bar and status bar, indicating the page is viewed in Internet Explorer at 100% zoom.

## ETHICS OFFICERS

Ethics officers act as liaisons between their staffs and the Commission. The Commission furnishes ethics officers with copies of all advisory opinions and publications of the Commission. The ethics officers are responsible for disseminating such information to their staffs. Additionally, the ethics officers coordinate approvals of outside employment for employees. Ethics officers further assist the staff of the Executive Branch Ethics Commission with ensuring officers and elected officials file the financial disclosure statements as required by law. During the biennium, 27 ethics officers received training on their role as ethics officers.

## PUBLICATIONS

As part of the Commission's educational emphasis, several publications explaining the various components of the code of ethics have been produced and are regularly updated. These items have been distributed to each state agency and are available for distribution to each employee upon request.

<u>PUBLICATION</u>	<u>LATEST DATE OF PUBLICATION/REVISION</u>
<i>Acceptance of Gifts</i>	July, 2000
<i>Executive Agency Lobbying Handbook</i>	January, 2007
<i>Leaving State Government?</i>	February, 2005
<i>Guide to the Executive Branch Code of Ethics</i>	May, 2007
<i>Advisory Opinions (1992 – 2006)</i>	February, 2007
<i>Executive Branch Ethics Commission (General Information)</i>	August, 2008
<i>Ethical Guidelines for Members of Boards &amp; Commissions</i>	September, 2009



## **ADVISORY OPINIONS**

The Commission is directed by statute to issue written advisory opinions. If an employee, agency head or member of the general public is unclear about a provision in the code of ethics, or if a situation is not specifically addressed in the code, an advisory opinion may be requested, in writing, from the Commission.

If the Commission determines that the matter has been addressed in a previous advisory opinion, it will issue advice in an “informal reply.” Informal replies are responses (advisory letter, e-mail, or telephone call) rendered by the Ethics Commission’s Executive Director or General Counsel. Frequently, employees may have questions or situations that require a swift reply. An advisory letter is limited to issues previously addressed by the Commission by issuance of a formal advisory opinion.

If the Commission determines that the matter has not been addressed in a previous advisory opinion, it will issue a new opinion to the requestor. In addition, the Commission may issue advisory opinions upon its own motion.

Advisory opinions issued by the Commission are based on the code of ethics, agency regulations and past Commission decisions. Because the Executive Branch Ethics Commission is the regulatory body authorized to interpret the code of ethics, the advisory opinions issued by the Commission are enforceable. Such opinions are public record and provide guidance to other employees with similar questions. Copies of written advisory opinions are distributed electronically and by paper copy to state agencies via ethics officers, employees and members of the general public who request them. Advisory opinions are also available on the Commission’s website <http://ethics.ky.gov/>.

### **ADVISORY OPINIONS ISSUED JULY 1, 2007 - JUNE 30, 2009**

The Commission issued 34 advisory opinions during the 2007-2008 fiscal year, and 37 during the 2008-2009 fiscal year. Additionally, the Commission issued 20 advisory letters during fiscal year 2007-2008 and 14 during fiscal year 2008-2009. See below the opinions issued by primary topic. Following are the summaries of the advisory opinions issued.

#### **ADVISORY OPINIONS, BY PRIMARY TOPIC**

	<u>Number Issued</u>
General Conflicts of Interest .....	28
Gifts/Travel Expenses .....	12

Post-employment/Representation .....	5
Outside Employment/Self-Employment .....	14
Contracts/Agreements .....	3
Solicitation .....	3
Endorsement.....	2
Executive Agency Lobbying.....	2
Misuse of State Time/Resources .....	1
Jurisdiction .....	1
<b>TOTAL</b>	<b><u>71</u></b>

**SUMMARY OF OPINIONS**  
**July 1, 2007 - June 30, 2009**

**July 1, 2007 - June 30, 2008**

**Advisory Opinion 07-20:** An employee of the Auditor of Public Accounts may develop and market software/services similar to a program developed for the agency as long as it is not part of his job duties with the APA, that he refrains from using his position with the APA to market the program, that he take great care not to use state time, equipment, resources, or his position to benefit his private endeavor, that he not market his program or services to entities that may be audited by the APA, and that he not market his program or services to vendors of, or persons or businesses that seek to influence the actions of, the APA.

**Advisory Opinion 07-21:** This advisory opinion was issued in the preceding fiscal year.

**Advisory Opinion 07-22:** This advisory opinion was issued in the preceding fiscal year.

**Advisory Opinion 07-23:** This advisory opinion was issued in the preceding fiscal year.

**Advisory Opinion 07-24:** This advisory opinion was issued in the preceding fiscal year.

**Advisory Opinion 07-25:** A Property Valuation Administrator field representative may work privately as an appraiser in his own county if the data collected as a part of his official duty is not used for PVA appraisals. However, an appearance of a conflict may still exist.

**Advisory Opinion 07-26:** A Property Valuation Administrator employee who is also a licensed realtor may accept referral fees as long as he does not have any involvement in the buying, selling, or any type of marketing or recommendation of the property, other than to refer a client to another realtor. The PVA employee should not conduct any such business on state time or property, including cell or other phone calls that relate to said real estate business, nor use the office address of the PVA for any private business correspondence.

**Advisory Opinion 07-27:** An agency may solicit sponsorship for a Kentucky Employees Charitable Campaign event and print co-sponsors names on t-shirts to be distributed as long as neither the agency nor agency employees actively endorse or acknowledge the co-sponsors of the event through a public statement.

**Advisory Opinion 07-28:** A former state employee may communicate with his former state agency on behalf of his current employer regarding implementation of existing contracts or grants awarded by his former agency assuming neither the former state employee nor anyone under his supervision had any involvement with such contracts or grants during the last three years.

**Advisory Opinion 07-29:** Because he is returning to his former profession, the Executive Director for Project Delivery with the Transportation Cabinet is not prohibited, upon retirement, from immediately accepting employment with a consulting firm with which he may have had direct involvement, provided for six months the employee does not work on any matters for the new employer with which he or anyone under his supervision had involvement.

**Advisory Opinion 07-30:** A Property Valuation Administrator is not prohibited from serving on a local board of directors provided the association involved is not seeking to influence decisions of the Office of the PVA, the PVA does not use his office to give an advantage to the association, and the PVA does not engage in any activity that would require registration as a lobbyist.

**Advisory Opinion 07-31:** Actions of a family support services worker in matters regarding a client whose baby the worker plans to adopt creates a conflict of interest unless the worker abstains from involvement in any matters of the client.

**Advisory Opinion 07-32:** This opinion number has been voided.

**Advisory Opinion 07-33:** Post-employment guidance and clarification for transportation engineer branch manager regarding project with which he had direct involvement.

**Advisory Opinion 07-34:** A Kentucky state agency may co-sponsor a conference with another state that solicits sponsors, and acknowledge such co-sponsorship in conference materials, as long as employees of the Kentucky state agency are not involved in the solicitation of such financial sponsorship from entities that do business with, are regulated by, or are seeking to influence some future action of the agency.

**Advisory Opinion 07-35:** Employment of the spouse of a commissioner of the Public Service Commission at a law firm that has clients that appear before the Public Service Commission does not necessarily create a conflict of interest for the commissioner; however, the commissioner should review KRS 11A.030 in determining whether to abstain in each case involving the law firm of the spouse.

**Advisory Opinion 07-36:** (Amends Advisory Opinion 07-25) A Property Valuation Administrator field representative may work privately as an appraiser in his own county if data collected as a part of his official duty is not used for PVA appraisal of a property on which he performs a private appraisal. However, an appearance of a conflict may still exist.

**Advisory Opinion 07-37:** Employees may not accept award of \$25 in gas from vendor based on agency fleet credit card purchases unless the agency is authorized to allow such private use, since the purchase agreement for the gas would be between the state agency and the vendor, and thus the award of the \$25 in gas would be owned by the state agency. A gift card offered to an employee from a vendor as a result of agency purchases would be considered a gift to the employee from the vendor since the employee has not provided equal or greater consideration for the gift card, and should not be accepted by the employee if greater than \$25. Any frequent flyer miles awarded as a result of an employee purchase of airline tickets on a personal credit card or for which the employee pays for a trip he is making on behalf of a state agency are not considered a “gift” to the employee, but are part of the purchase agreement the employee has with the airline. Even though the fare may be subsequently reimbursed to the employee by the state agency, the employee is not prohibited from accepting the frequent flyer miles. However, if the state agency directly purchases the airline ticket for an employee, any frequent flyer miles offered to an employee are actually owned by the employee’s state agency and the issue of whether the agency may allow the employee to use the frequent flyer miles for his private use is more appropriately addressed by agency management in conjunction with the Finance and Administration Cabinet.

**Advisory Opinion 07-38:** This opinion number has been voided.

**Advisory Opinion 07-39:** An employee of the Division of Water, Department of Environmental Protection, Environmental and Public Protection Cabinet, may be certified as a methamphetamine cleanup contractor provided neither the Department of Environmental Protection, nor the Division of Water has implemented a policy prohibiting employees from obtaining such cleanup certifications and so long as you do not provide such cleanup services for persons or businesses that are regulated by the Division of Water.

**Advisory Opinion 07-40:** The naming rights for the Kentucky Horse Park’s new indoor arena may be sold provided the selling of the naming rights is competitively bid and the sale has an overriding public benefit. However, this trend is somewhat disturbing in that it reflects an endorsement that will forever remain with the state agency.

**Advisory Opinion 07-41:** An employee of a systems development services contractor that provides executive support to state agencies is not considered an executive branch employee under the jurisdiction of the Executive Branch Code of Ethics.

**Advisory Opinion 07-42:** The Department of Parks, within the Commerce Cabinet, may allow a state park historian to conduct a book signing at a commemorative event provided he does not use any state time or resources, and provided the decision to allow the conduct of the book signing is not made by the employee or anyone under his supervision.

**Advisory Opinion 07-43:** The Department of Vehicle Regulation, within the Justice Cabinet, may allow a sworn officer to own and operate a limousine business if the officer has no involvement in the regulation of the business.

**Advisory Opinion 07-44:** An individual's acceptance as the communications director for the Office of the Governor does not present a conflict of interest provided he abstains as part of his official duties from matters involving his private firm and the firm's clients.

**Advisory Opinion 07-45:** Employment of a potential candidate for Secretary for the Environmental and Public Protection Cabinet who owns less than a five percent (5%) interest in stock of a publicly held bank corporation, and for which he also formerly served on the board of directors, does not pose a conflict of interest provided the individual refrains from involvement for a reasonable period of time regarding any matters pertaining to the bank corporation.

**Advisory Opinion 07-46:** The Personnel Cabinet Secretary should refrain from all matters relating to any contracts between Humana and the Commonwealth of Kentucky since her spouse is employed by Humana.

**Advisory Opinion 08-1:** The inclusion of an individual in a will is not within the definition of "gift" until an individual is deceased, and thus the children of employees of a veterans center are not prohibited by the Executive Branch Code of Ethics from inclusion in a resident's will. However, the Kentucky Department of Veterans' Affairs should consider the consequences of such inclusion and adopt internal policies to address the matter.

**Advisory Opinion 08-2:** A mine inspector may accept short-term employment with a coal company in order to gain retirement and health care benefits as long as he has no involvement with the coal company in his state position, he does not perform any work for the coal company on state time, and such employment does not interfere in any way with his job duties.

**Advisory Opinion 08-3:** A Kentucky Vehicle Enforcement Officer may work for an attorney's office conducting investigations and serving subpoenas only in those matters that do not pose a conflict with his peace officer position. He should have no involvement in his peace officer position in matters concerning investigations or subpoenas with which he has had involvement as part of his private work, and he should not be involved in investigations and subpoena service in his private work if he has had involvement with such cases as a peace officer.

**Advisory Opinion 08-4:** Reconsideration of Advisory Opinion 07-43: Although a sworn Kentucky Vehicle Enforcement Officer may operate a private limousine service, potential conflicts may exist for the employee. As part of his official duty, the sworn officer should have no involvement in matters regarding his limousine service or any business that competes with his limousine service. He also must ascertain that he does not regulate any of his private clients as a part of his official duty. If it is impossible for him to remove such potential conflicts, he should not operate the limousine service. Kentucky Vehicle Enforcement also may implement in-house policies regarding such outside business operations of employees.

**Advisory Opinion 08-5:** The Executive Director of the Education Professional Standards Board may accept a professional organization's offer to pay for attendance at a conference since the Board does not regulate the members of the organization. However, the Board may not accept travel and hotel accommodations from a testing service that the Board selects to administer proficiency tests.

**Advisory Opinion 08-6:** A Chief District Engineer employed by the Transportation Cabinet may accept a scholarship from a university even if donors are persons or businesses that do business with or are regulated by the Cabinet provided the scholarship selection is made by the university and not by the donors.

**Advisory Opinion 08-7:** Officers employed by the Department of Revenue may serve as ex-officio members of Kentucky Farm Bureau Tax Advisory Committee as long as they are non-compensated and non-voting.

**Advisory Opinion 08-8:** An employee of the Division of Mine Permits within the Department for Natural Resources may participate in volunteer activity for the Salt River Watershed Watch without creating a conflict of interest.

**Advisory Opinion 08-9:** Employee who had involvement with specific clients in previous state employment should abstain for a reasonable period of time before having any involvement in matters pertaining to the same clients.

**Advisory Opinion 08-10:** A former Commissioner of Parks may provide volunteer service for the Kentucky State Park Foundation and accept reimbursement for expenditures made on behalf of the Foundation, including mileage while traveling on behalf of Foundation efforts. He also may participate in fund-raising activities on behalf of the Foundation.

**Advisory Opinion 08-11:** A conflict of interest will not exist for the Transportation Secretary to have an ownership interest in property adjacent or near to a priority road project when the ownership interest predates the identification of the road project as a priority and the Secretary abstains, in writing, from any future decisions that could affect the property in question that have not been addressed in the six year plan.

**Advisory Opinion 08-12:** A Transportation Cabinet staff attorney and EEO compliance officer may serve as board member representatives, as part of their official duties for the Cabinet, on a non-profit community land trust.

**Advisory Opinion 08-13:** The Department for Employee Insurance in the Personnel Cabinet may accept written brochures and speakers for its wellness programs from pharmaceutical companies provided the brochures and speakers do not advertise or mention specific drugs or companies

**July 1, 2008 - June 30, 2009**

**Advisory Opinion 08-14:** This opinion number has been voided

**Advisory Opinion 08-15:** An administrative coordinator for the Department of Corrections responsible for oversight of the Recovery Kentucky facilities and prison/jail substance abuse programs cannot serve as a member of the statewide Board of Directors for People Advocating Recovery.

**Advisory Opinion 08-16:** An officer for the Kentucky Board of Respiratory Care may serve as an officer for a professional organization for respiratory therapists; however, a conflict of interest will arise every time a matter affecting the professional organization or the regulation of its members is before the Kentucky Board of Respiratory Care. Executive Order 2008-454 requires the member to publicly disclose each and every conflict of interest and abstain in decisions relating to the conflict.

**Advisory Opinion 08-17:** A state agency is not prohibited from offering a discount on lodging in state parks to businesses, including vendors of the agency, so long as the businesses are evaluated according to standard criteria and treated equally.

**Advisory Opinion 08-18:** An employee's volunteer activity does not present a conflict of interest with his official duty, as long as the employee makes a clear distinction between his official duty and his volunteer activity.

**Advisory Opinion 08-19:** The Executive Director of a state board may not be involved in the RFP and bid selection process when the Executive Director's adult children are associated with one of the potential bidder's companies as independent contractors.

**Advisory Opinion 08-20:** The Chairman of the Public Service Commission may actively practice law if he does not represent clients regulated by the Public Service Commission, subject to the approval of his appointing authority. A period of six months is a reasonable period of time for the Chairman of the Public Service Commission to abstain in a matter pending before the Public Service Commission in which the Chairman formerly represented one of the parties in the matter, and in a matter in which his former law firm represents a party. However, the agency

may require the Chairman to abstain for a longer period of time. The Chairman of the Public Service Commission may serve on boards of certain charitable and civic organizations that are not regulated by the Public Service Commission

**Advisory Opinion 08-21:** With limitations and the approval of his appointing authority, the Vice Chairman of the Public Service Commission may actively practice law, serve as a Bankruptcy Trustee, and remain an equity partner in a law firm in an "as counsel" role. A period of six months is a reasonable period of time for the Vice Chairman of the Public Service Commission to abstain in a matter pending before the Public Service Commission in which the Vice Chairman formerly represented one of the parties, but the agency may require abstention for a longer period of time. A Vice Chairman who was a former member of the Sierra Club is not required to abstain in cases in which the Sierra Club intervenes as a party.

**Advisory Opinion 08-22:** A conflict of interest exists when a member of the Kentucky Real Estate Commission owns a real estate school. Executive Order 2008-454 requires the member to publicly disclose the ownership interest in the real estate school and abstain from decisions concerning his or her interest.

**Advisory Opinion 08-23:** An Administrative Section Supervisor for the Kentucky Law Enforcement Council may administer polygraph tests through her own private company to individuals monitored by Probation and Parole.

**Advisory Opinion 08-24:** Employees of the Kentucky Department of Parks may perform duties and requested tasks for the Kentucky State Park Foundation on state time and utilizing state resources, unless such use of state time and resources becomes abusive or interferes with the employee's regular duties.

**Advisory Opinion 08-25:** Executive Order 2008-454 subjects board members of the Bluegrass State Skills Corporation to the gift provisions of KRS 11A.045, and the request for a blanket gift exception to allow the board members to receive gifts in excess of the statutory limit is denied.

**Advisory Opinion 08-26:** An employee of the Governor's Office may accept tickets to a sporting event from a former employer who has a business relationship with the Governor's Office, as long as the employee pays face value for the tickets.

**Advisory Opinion 08-27:** The Executive Director of the Office of Financial Management for the Kentucky Finance Cabinet may serve as a public issuer representative board member on the Municipal Securities Rulemaking Board.

**Advisory Opinion 08-28:** Members of the Kentucky Board of Auctioneers who are licensed auctioneers may perform activities for or with other licensed auctioneers or for other state entities and get paid for his or her services. However, the board member cannot perform auction activities for the board, and the board member must publicly disclose conflicts of interest that may arise and abstain from all decisions by the board related to those conflicts.

**Advisory Opinion 08-29:** A Division Director who is a licensed attorney but who had no attorney responsibilities for the agency may return to private law practice and immediately begin to represent clients before his former agency, provided that he refrains for a period of one year from participation in matters in which he was directly involved for the last thirty-six (36) months of his state employment.

**Advisory Opinion 08-30:** A landscaping company owned by an employee subject to the Code of Ethics may not provide landscaping and mowing services on a property leased by the employee's agency through a property management company, even though the employee is not a party to the contract between the property management company and the agency for maintenance of the property.

**Advisory Opinion 08-31:** A social worker may not participate in a baby shower or accept baby gifts from foster care families who are part of the social worker's caseload.

**Advisory Opinion 08-32:** No conflict of interest exists for a Director of Administration for the Workers Compensation Funding Commission who also provides instructional services for government finance professionals, because there is no intersection between the official's private interests and the official job duties of the Director of Administration.

**Advisory Opinion 09-1:** An employee may participate as a volunteer on the employee's own time in a local chamber of commerce organization, so long as the employee's volunteer activities do not create a conflict of interest with the employee's official duties.

**Advisory Opinion 09-2:** An agency may solicit contributions and grants from entities it does business with when there is express legislative intent and statutory authority for the solicitations.

**Advisory Opinion 09-3:** A case manager/nurse investigator for the Kentucky Board of Nursing may accept part-time employment with a nursing school in Kentucky, if the employee's official job duties do not include regulation of nursing school programs. However, the employee must cease the part-time employment in the event that the employee's job duties change to include regulation of nursing school programs, or if a particular student who enrolls in a class taught by the employee is subject to disciplinary monitoring by the employee.

**Advisory Opinion 09-4:** A state employee may accept a sum of money from an Employee Stock Ownership Plan from a previous employer, even though the employee deals with the former employer in the course of performing his official duties. However, the employee must abstain from any involvement in matters concerning his former employer for a reasonable length of time after receiving payment in full.

**Advisory Opinion 09-5:** The Deputy Secretary of the Tourism, Arts, and Heritage Cabinet may accept employment with the World Games 2010 Foundation, Inc. ("Foundation"), because the Tourism, Arts, and Heritage Cabinet is not doing business with the Foundation, nor is the Foundation regulated by the Commonwealth.

**Advisory Opinion 09-6:** For a period of one year, a former employee may not work for a private company that seeks to do business with the employee's former agency on matters in which the employee was directly involved during the last thirty-six months of his tenure.

**Advisory Opinion 09-7:** The Governor's Chief of Staff may sell his interest in an office condominium to his co-owner, who is a registered executive and legislative branch lobbyist, but he is required to abstain from any official decision involving either the real property or the lobbyist for a reasonable time after the sale of the property.

**Advisory Opinion 09-8:** The Commissioner of the Department for Fish and Wildlife Resources may also be self employed as an independent contractor with a land development company. However, he cannot do business with his own agency, and he must ensure that he has no competing interests between his official position and his private interests.

**Advisory Opinion 09-9:** The President of the Kentucky Board of Dentistry, who also serves as President for one of four regional testing companies authorized to administer required clinical examinations to dentists seeking licensure in Kentucky, has a conflict of interest that must be publicly disclosed and requires abstention from all decisions by the Kentucky Board of Dentistry related to testing. Additionally, it is a conflict of interest for the President of the Kentucky Board of Dentistry who has been disciplined by the Board from subsequently participating in contract or employment decisions for those individuals involved in his disciplinary matter.

**Advisory Opinion 09-10:** Legislative agents on the public affairs staff of the Kentucky Chamber of Commerce are not required to register as executive agency lobbyists since the activities described do not meet the definition of executive agency lobbying as outlined in KRS 11A.201.

**Advisory Opinion 09-11:** The Kentucky Department of Veterans Affairs may accept a monetary gift from a resident of the Eastern Kentucky Veterans Center so long as all residents are cared for in a fair and impartial manner and never feel pressured to make such donations.

**Advisory Opinion 09-12:** The Kentucky Board of Speech-Language Pathology and Audiology is not prohibited by KRS Chapter 11A from contributing funds to associations related to the professions regulated by the Board. However, members of the Board who also serve in a leadership role in any of those professional associations should abstain from any matter before the Board that could affect his or her own association.

**Advisory Opinion 09-13:** An employee of the Finance and Administration Cabinet may accept as a wedding gift tickets to a sporting event from an individual with whom his agency has a contract.

**Advisory Opinion 09-14:** It is not a conflict of interest for a Property Valuation Administrator or a deputy Property Valuation Administrator to own real property in the county in which he or she is employed so long as they are not involved in the buying and selling of property as a business practice in the county in which they are employed.

**Advisory Opinion 09-15:** The daughter of the Secretary of the Finance and Administration Cabinet may accept bat mitzvah gifts from persons or businesses that do business with, are regulated by, are seeking grants from, are involved in litigation against, or are attempting to influence the Finance and Administration Cabinet, provided the gifts are reasonable in value.

**Advisory Opinion 09-16:** Amends Advisory Opinion 08-11: Transportation Cabinet officials other than the Secretary may make decisions with respect to a highway project located near real property owned by the Secretary and may provide technical expertise to the neutral third party appointed to make discretionary decisions in lieu of the Secretary so long as the Secretary remains uninvolved with any of those discussions or decisions. Further, the Secretary may testify before Legislative committees regarding other projects named in the Six Year Road Plan and other Transportation Cabinet employees may testify if questions arise regarding the road project located near the real property owned by the Secretary.

**Advisory Opinion 09-17:** The co-ownership of real property by the Secretary of the Governor's Executive Cabinet with the Secretary of the Transportation Cabinet or his family does not create any issues under the Executive Branch Code of Ethics with respect to a highway project located near the real property assuming the Secretary abstains from any involvement in the highway project. Likewise, the ownership of real property by the interim Secretary of the Cabinet for Economic Development does not create any issues under the Executive Branch Code of Ethics with respect to infrastructure grants for an industrial property located near the real property assuming the interim Secretary abstains from any involvement in the grant process.

**Advisory Opinion 09-18:** An employee of the Department of Environmental Protection, Division of Water, is prohibited from bidding on or holding a contract with the Department for Natural Resources, Division of Abandoned Mine Lands, as a statutory conflict would exist due to the fact that the departments are part of the same agency.

**Advisory Opinion 09-19:** A state employee may purchase a product from a state-contracted vendor at a lower than retail rate for their personal use as long as the discount value does not exceed \$25 per person per year.

## **SUMMARY OF EXCEPTIONS**

**July 1, 2007-June 30, 2009**

### **July 1, 2007-July 30, 2008**

No exceptions were issued during this fiscal year.

**July 1, 2008-July 30, 2009**

**Exception No. 2009-1 (Advisory Opinion 09-13):** An employee of the Finance and Administration Cabinet may accept as a wedding gift tickets to a sporting event from an individual with whom his agency has a contract.

**Exception No. 2009-2 (Advisory Opinion 09-15):** The daughter of the Secretary of the Finance and Administration Cabinet may accept bat mitzvah gifts from persons or businesses that do business with, are regulated by, are seeking grants from, are involved in litigation against, or are attempting to influence the Finance and Administration Cabinet, provided the gifts are reasonable in value.

These summaries are designed to provide examples of decisions of actual inquiries of the Commission. Key points may have been deleted in the interest of brevity. Each opinion is available in its entirety upon request from the Executive Branch Ethics Commission, #3 Fountain Place, Frankfort, KY, 40601, (502)564-7954, or on the Commission's website at <http://ethics.ky.gov/>.

## FINANCIAL DISCLOSURE

One of the Commission's principal responsibilities is to administer the financial disclosure provisions of the statute. State elected officials and appointed officers in the executive branch of state government are required by statute to file a statement of financial disclosure with the Commission no later than April 15 for the previous calendar year or within 30 days of termination of employment. Candidates for executive branch state offices are required to file a disclosure statement no later than February 15 of an election year. Statements of Financial Disclosure are open to the public for inspection.

Failure to file a disclosure statement in a timely manner is punishable by withholding of the employee's salary until the statement is filed. The following information is required to be disclosed on the statement:

- ◆ Name and address, both residential and business;
- ◆ Title of position or office in state government;
- ◆ Other occupations of filer or spouse;
- ◆ Positions held by filer or spouse in any business, partnership, or corporation for profit;
- ◆ Names and addresses of all businesses in which the filer, spouse, or dependent children had an interest of \$10,000 or 5% ownership interest or more;
- ◆ Sources of gross income exceeding \$1,000 of the filer or spouse including the nature of the business;
- ◆ Sources of retainers received by the filer or spouse relating to matters of the state agency for which the filer works or serves in a decision-making capacity;
- ◆ Any representation or intervention for compensation by the filer or spouse before a state agency for which the filer works or serves in a decision making capacity;
- ◆ All positions of a fiduciary nature in a business;
- ◆ Real property in which the filer, spouse or dependent children has an interest of \$10,000 or more;
- ◆ Sources of gifts or gratuities with a retail value of more than \$200 to the filer, spouse or dependent children; and
- ◆ Creditors owed more than \$10,000.

The following statistics compare the disclosure statement filings for calendar years 2007 and 2008.

### FINANCIAL DISCLOSURE STATEMENTS

	CALENDAR YEAR 2007		CALENDAR YEAR 2008	
	<u>#</u>	<u>% of Total</u>	<u>#</u>	<u>% of Total</u>
Statements Filed Timely	1263	88%	1496	93%
Active Officers Filed Late/ Salary Withheld**	76	5%	54	3%
Former Officers Filed Late	100	7%	60	4%
Former Officers Investigated for Failure to File Timely	3	<1%	1	<1%
Former Officers Investigated for Failure to File Complete	0	0%	1	<1%
<b>TOTAL REQUIRED FILINGS</b>	1439	100%	1610	100%
Disclosure Statements Audited	193	15%	40	3%

\*\*Officers who filed late were subject to salary withholding; however, because of the two-week delay in processing payrolls, the officers were able to file prior to any actual withholding taking place.

### AUDITS

Upon receipt of the Statements of Financial Disclosure, each is reviewed to determine whether it is complete and the instructions have been followed. The Commission is required by statute to audit the Statements to detect information that might suggest a conflict of interest or other impropriety. If such is detected, staff may refer Statements to the Commission and investigations may be initiated.

### ELECTRONIC FORMS

Employees may download a blank Statement of Financial Disclosure form from the Commission's web site at <http://ethics.ky.gov/> and complete the SFD form electronically, print a paper copy and forward it with an original signature to the Commission. Paper forms are provided upon request.

# **INVESTIGATIONS, ADMINISTRATIVE PROCEEDINGS AND LITIGATION**

## **COMPLAINTS**

A citizen of the Commonwealth may submit a complaint signed under penalty of perjury alleging a violation of KRS Chapter 11A. The provisions of KRS 11A.080 require the Commission to investigate such a complaint. In addition, the Commission may initiate a preliminary investigation of an alleged violation upon its own motion based on information obtained from various sources such as information received by Commission staff, a referral from another state agency, or a media story.

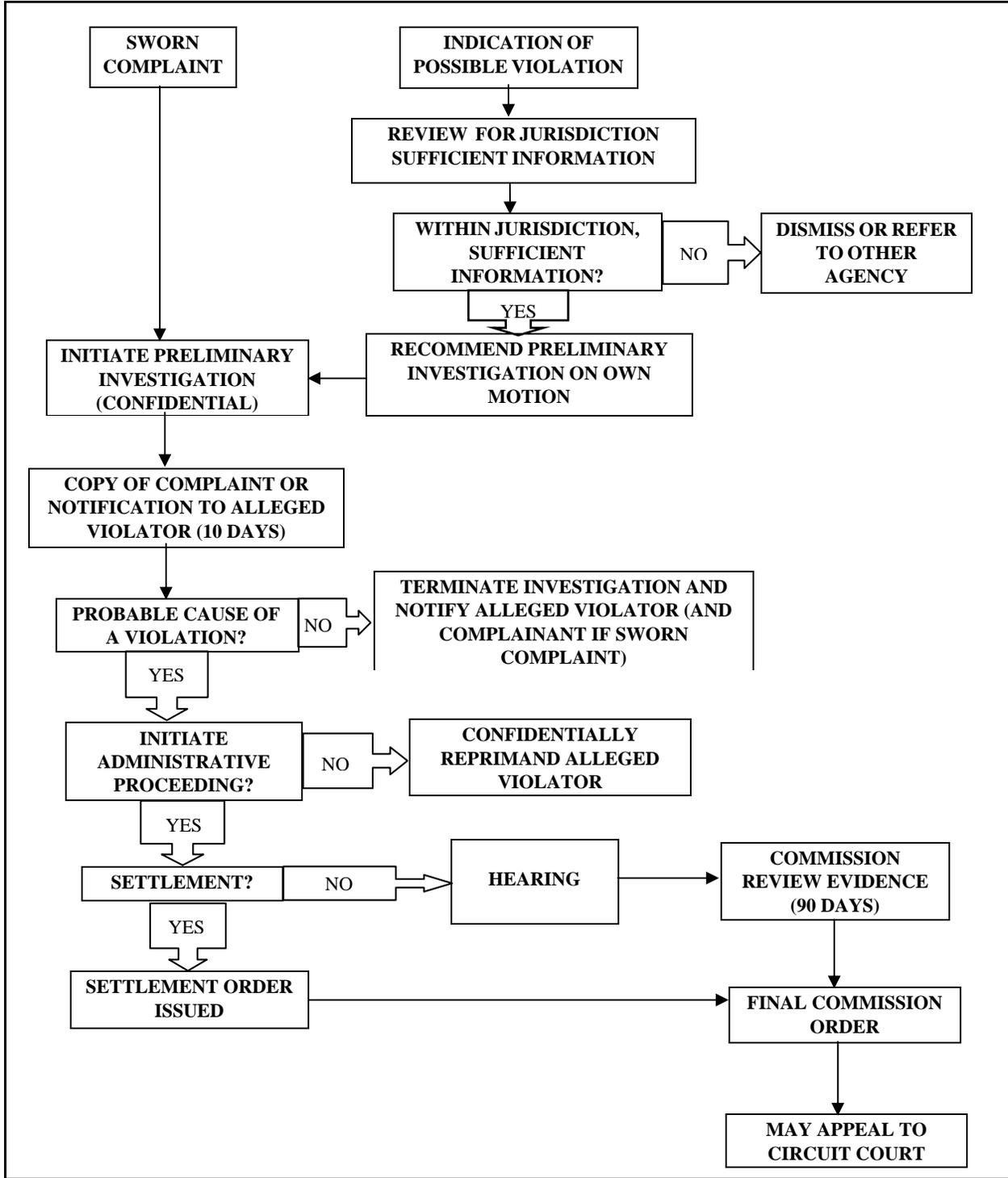
## **INVESTIGATIONS**

Investigations are conducted by the Commission staff, referred to another agency, or conducted jointly with another agency. Within ten days of the commencement of a preliminary investigation, a copy of the sworn complaint (if applicable) and a statement of the applicable law are forwarded to the alleged violator. Likewise, if the preliminary investigation is initiated upon the Commission's own motion, the alleged violator must be notified within ten days. Commission records and proceedings relating to a preliminary investigation are confidential until the Commission makes a final determination, unless the alleged violator confirms the existence of the investigation. The Commission may then publicly confirm the existence of the investigation, and, in its discretion, make public any documents issued.

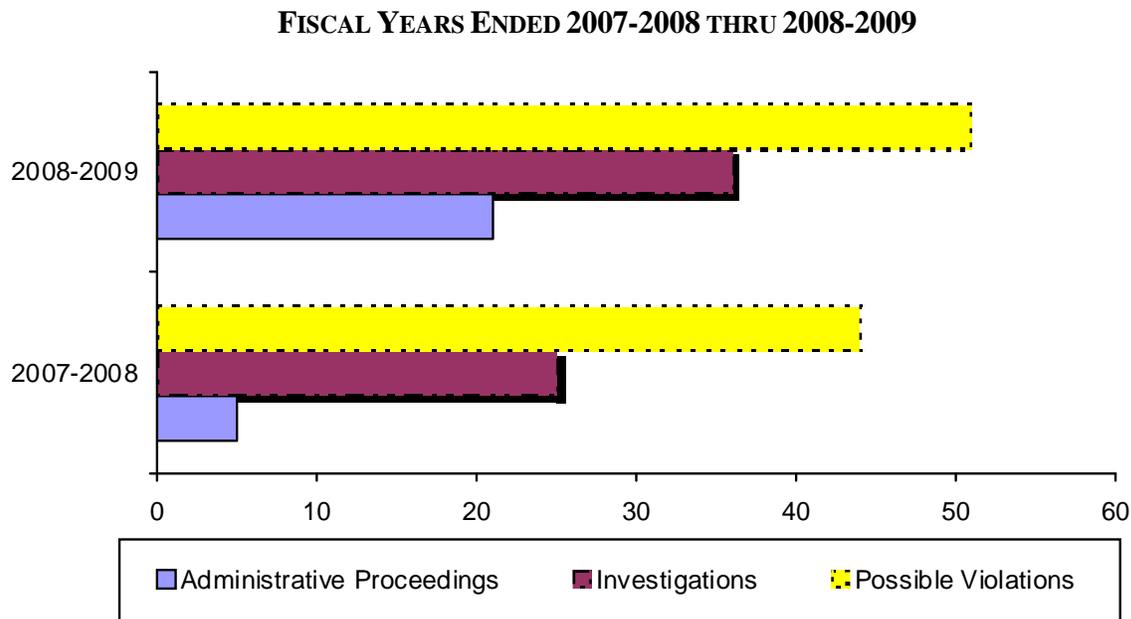
If the Commission determines, as a result of a preliminary investigation, that the facts are not sufficient to find probable cause of a violation of the code of ethics, the Commission must terminate the investigation and notify the complainant, if any, and the alleged violator in writing. The Commission may confidentially inform the alleged violator of potential violations and provide information to ensure future compliance. If the alleged violator publicly discloses the existence of the action by the Commission, the Commission may confirm its action, and, in its discretion, make public any documents issued to the alleged violator.

# INVESTIGATIVE FLOW CHART

The following flow chart illustrates the Commission's investigative process.



If the Commission finds, during a preliminary investigation, that probable cause of a violation has occurred, the Commission may: 1) due to mitigating circumstances such as no significant loss to the state, lack of significant economic gain to the alleged violator, or lack of significant impact on public confidence in government, issue to the alleged violator a confidential reprimand and provide a copy of the reprimand to the alleged violator's appointing authority; or, 2) initiate an administrative proceeding to determine whether there has been a violation.



### **ADMINISTRATIVE PROCEEDINGS**

The provisions of KRS Chapter 13B apply to all Commission administrative hearings. If, during an administrative hearing, the Commission finds clear and convincing proof of a violation of the code of ethics, it may require the violator to cease and desist the violation, require the violator to file any required report or statement, publicly reprimand the violator, recommend the appointing authority suspend or remove the violator from office or employment, and/or impose a civil penalty of not more than \$5,000 per each violation. (Collected civil penalties are deposited into the General Fund.) In addition, any violation that has substantially influenced action taken by any state agency in a matter shall be grounds for voiding, rescinding or canceling the action based on the interests of the state and innocent third persons. The Commission must refer to the Attorney General for prosecution any violations of KRS 11A.040. Final action by the Commission may be appealed to the Circuit Court upon petition of any party in interest.

## STATISTICS

	<u>2007--2008</u>	<u>2008--2009</u>
Possible Violations Reviewed	44	51
Investigations Initiated	25	36
Investigations Terminated	6	20
Confidential Reprimands	5	9
Administrative Proceedings Initiated	5	21
Cases Referred To Law Enforcement Agencies	1	3
Employees Penalized	7	7
Investigations Active at Fiscal Year End	32	17

## DISPOSITION OF INVESTIGATIONS

Informal complaints received by the staff were researched and either brought to the Commission, referred to another agency, or dismissed for lack of jurisdiction. Of the preliminary investigations initiated, either during this biennium or the previous one, 34 did not have sufficient facts to constitute a violation of the code of ethics; however, many alleged violators were sent information to ensure future compliance with the code of ethics. Fourteen investigations showed probable cause of a violation; however, due to mitigating circumstances, the alleged violators were confidentially reprimanded. Seventeen investigations remained active as of June 30, 2009. In 26 other investigations, the Commission found probable cause of violations and issued initiating orders for administrative proceedings. The proceedings are detailed as follows:

### ADMINISTRATIVE ACTION JULY 1, 2007 THROUGH JUNE 30, 2009

#### ***Case No. 06-110***

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**ALLEGATION:** That a former employee of the Transportation Cabinet 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; 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; violated KRS 11A.020(1)(a), (b), and (d) by using or attempting to use his official position to influence a public agency by drafting and maintaining a “hit list” comprised of both classified (merit) system employees of the Transportation Cabinet and unclassified (non-merit) employees of the Transportation Cabinet for the purpose of identifying these employees for adverse personnel actions (terminations, reversions, reassignments, and involuntary transfers) based in large part on their political affiliation or opinion; violated KRS 11A.020(1)(a) and (b) by using or attempting to use his official position to facilitate the involuntary transfer and demotion of a state classified (merit) system employee of the Transportation Cabinet, without cause, based on political affiliation or opinion; 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 a state classified (merit) system position in the Transportation Cabinet and give her an advantage over other more qualified individuals based solely on her political connections and support of the current administration rather than her qualifications; 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 an individual based on his family relationship to a close supporter of the political agenda of the current administration, rather than his qualifications, to a state classified (merit) system position in the Transportation Cabinet; 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 an individual 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; violated KRS 11A.020(1)(a) and (b) by using or attempting to use his official position by participating in the involuntary dismissal of a state classified (merit) system employee of the Transportation Cabinet, based on the employee’s political affiliation or opinion; violated KRS 11A.020(1)(d) by using or attempting to use his official position to access official documents in order to alter them so that they might not be used as evidence against him or others in legal proceedings; and violated KRS 11A.020(1)(d) by using or attempting to use his official position to influence a state classified (merit) system employee of the Transportation Cabinet, to alter or falsify her future testimony in official proceedings so that her testimony might not be used as evidence against him or others.

**CONCLUSION:** This case is pending.

### ***Case No. 07-27***

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**ALLEGATION:** That a former employee of the Department of Fish and Wildlife Resources violated KRS 11A.020(1)(c) and (d) by using his official position to give himself a financial gain and an advantage in derogation of the public at large by misappropriating fine payments collected from convicted poachers that should have been deposited with the Department of Fish and Wildlife Resources.

**CONCLUSION:** In a Settlement Agreement, the former employee admitted to violating KRS 11A.020(1)(c) and (d) as alleged, agreed to pay a \$500 civil penalty, received a public reprimand, and waived any right to appeal. The former employee was also ordered by a Federal Court to pay restitution in the amount of \$9,600 to the Department of Fish and Wildlife Resources.

### ***Case No. 07-103***

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**ALLEGATION:** That a former Commissioner of Highways in the Transportation Cabinet violated KRS 11A.020(1)(b) and (d) by using or attempting to use his influence and/or official position in directing the State Highway Engineer to use or attempt to use his influence and/or official position to influence Consultant Selection Committee members for the benefit of a certain outside consulting firm during an open selection process relating to a Transportation Cabinet project.

**CONCLUSION:** The Commission adopted the recommendation of the hearing officer that there was not clear and convincing evidence that the former Commissioner of Highways violated KRS 11A.020(1)(b) and (d).

### ***Case 07-105***

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**ALLEGATION:** That an employee of the Kentucky Board of Engineers and Land Surveyors, violated KRS 11A.020(1)(c) and (d) by using 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 by regularly receiving payment from his agency for hours worked per day, when in fact he habitually worked fewer hours per day, or at times did not come to work at all.

**CONCLUSION:** In a Settlement Agreement, the former employee admitted to violating KRS 11A.020(1)(c) and (d) as alleged, received a public reprimand, and waived any right to appeal.

### ***Case No. 07-106***

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**ALLEGATION:** That a former Deputy Secretary of the Transportation Cabinet violated KRS 11A.020(1)(a) and (b) by using or attempting to use his official position by participating in the involuntary dismissal of a state classified (merit) system employee of the Transportation Cabinet, based on political affiliation or opinion. Such action presented a substantial conflict between the employee's personal political interests and his duty in the public interest in disregard of the statutes and regulations governing the merit hiring system.

**CONCLUSION:** This case is pending.

***Case No. 07-107***

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**ALLEGATION:** That a former Commissioner of the Governor’s Office for Local Development violated KRS 11A.020(1)(a), (b), and (c) by using or attempting to use his official position and influence to pressure the Executive Director of the Office for Human Resource Management, Cabinet for Health and Family Services, the agency’s appointing authority, to direct that an individual be placed in a merit position, based on political support for the current administration, in disregard of the fact that the individual continually interviewed poorly and was not the best qualified person for any of the merit positions for which she had interviewed.

**CONCLUSION:** This case is pending.

***Case No. 07-108***

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**ALLEGATION:** That a former Deputy Secretary of the Personnel Cabinet, and former Director of the Governor’s Office of Personnel and Efficiency, violated KRS 11A.020(1)(a), (b), and (c) by using or attempting to use his official position and influence by instructing the Executive Director of the Governor’s Office for Local Development (“GOLD”) to “get rid” of some of GOLD’s higher paid merit employees on the basis of their political contributions; violated KRS 11A.020(1)(a), (b), and (d) by placing private political interests above his duties as an employee of the Commonwealth of Kentucky when he attempted to influence officials in the Office of Human Resource Management, Cabinet for Health and Family Services to give employment advantages to certain individuals by instructing the officials to speed up the “personnel initiative” process of placing individuals recommended by legislators, county judges and others who supported the Governor in merit positions based on the source of recommendation and the applicant’s political support of the Governor rather than on the applicant’s qualifications, referencing the Transportation Cabinet’s method of doing so as an example for them to follow; 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 directing personnel of various agencies to hire merit system applicants based on private political interests rather than qualifications or agency personnel preference with disregard to personnel statutes or regulations governing the merit system hiring procedures; and violated KRS 11A.020(1)(a) by placing private political interests above his duties as an employee of the Commonwealth of Kentucky when, as the effective director of the “personnel initiative,” he aided and abetted the hiring, appointment, promotion, demotion, or transfer of individuals based on political considerations rather than qualifications.

**CONCLUSION:** This case is pending.

### ***Case No. 07-109***

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**ALLEGATION:** That a former Director in the Commerce Cabinet, and former Deputy Secretary, Personnel Cabinet, 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 directing personnel of various agencies to hire merit system applicants based on private political interests rather than qualifications or agency personnel preference with disregard to personnel statutes and regulations governing the merit system hiring procedures; and violated KRS 11A.020(1)(a) by placing private political interests above his duties as an employee of the Commonwealth of Kentucky when, as the effective co-director of the “personnel initiative,” he aided and abetted the hiring, appointment, promotion, demotion, or transfer of individuals based on political considerations rather than qualifications.

**CONCLUSION:** In a Settlement Agreement, the former employee admitted that the factual allegations against him, if proven true at a hearing, could result in a determination of a violation of KRS 11A.020(1) (a), (b), and (d); agreed to receive a public reprimand; and waived any right to appeal.

### ***Case No. 07-110***

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**ALLEGATION:** That a former environmental inspector for the Environmental and Public Protection 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 at large by unlawfully extorting \$500 cash, and future monthly payments of \$500, from a surface-mine owner whose operation the employee inspected in the performance of his official duties in violation of KRS 11A.020(1)(a), (c), and (d).

**CONCLUSION:** The Commission determined that the former employee violated KRS 11A.020(1)(a), (c), and (d) as charged, and imposed a civil fine of \$5,000.

### ***Case No. 07-111***

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**ALLEGATION:** That a former inspector for the Office of Consumer Protection within the Office of the Attorney General accepted significant financial benefits relating to his trade-in/purchase of used cars amounting to a value greater than \$25 on each occasion from a business regulated by the agency and division by which the employee was employed and against which numerous complaints had been filed by the public, in violation of KRS 11A.045(1).

**CONCLUSION:** In a Settlement Agreement, the former employee admitted to violating KRS 11A.045(1) as alleged, agreed to pay a civil penalty in the amount of \$1,000, received a public reprimand, and waived any right to appeal.

### ***Case No. 07-112***

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**ALLEGATION:** That a Highway Superintendent in the Department of Highways, Transportation Cabinet, used his official position to secure or create privileges or advantages for himself in derogation of the public interest at large. Such conduct included the misuse of state time, equipment, and manpower for personal gain by himself and employees under his supervision, in violation of KRS 11A.020(1)(a) and (d).

**CONCLUSION:** In a Settlement Agreement, the employee admitted to violating KRS 11A.020(1)(a) and (d) as alleged, agreed to pay a civil fine in the amount of \$1,000, received a public reprimand, and waived any right to appeal.

### ***Case No. 07-113***

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**ALLEGATION:** That a former Transportation Cabinet employee accepted outside employment with an engineering firm that was doing business with his agency in violation of KRS 11A.040(10); acted as a representative of the outside employer or its clients before his own state agency in violation of KRS 11A.020(2); and 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 by getting paid in his official capacity during time he was completing work for his outside employer by claiming sick leave, in violation of KRS 11A.020(1)(c) and (d).

**CONCLUSION:** The Commission determined that the former employee violated KRS 11A.040(10), KRS 11A.020(2), and KRS 11A.020(1)(c) and (d) as charged and imposed a civil penalty of \$3,000.

### ***Case No. 07-115***

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**ALLEGATION:** That a former Deputy Secretary of the Transportation Cabinet used or attempted to use his official position to facilitate the transfer and demotion of a state classified (merit) employee without cause, and based on the employee's political affiliation or opinion and past political positions in violation of KRS 11A.020(1)(a) and (b); violated KRS 11A.020(1)(a) and (b) by using or attempting to use his official position to precipitate the retirement of a state classified (merit) system employee by means of a temporary assignment for the purpose of making the employee's merit position available for a person who supported the political agenda of the administration; 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 an individual to a state classified (merit) system position in the Transportation Cabinet and give the individual an advantage over other more qualified applicants based on the individual's political views and

support of the administration rather than on his qualifications; 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 the employee and then appointing the employee to that new position without considering other candidates in order to circumvent the merit system and give the employee a higher salary; 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 a supporter of the administration to a state classified (merit) system position in the Transportation Cabinet and give the individual an advantage over other more qualified applicants based solely on the individual's political activities on behalf of the administration rather than her qualifications; violated KRS 11A.020(1)(a) and (b) by using or attempting to use his official position to facilitate the transfer of a state classified (merit) system employee of the Transportation Cabinet, 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 administration; 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 an individual based on his family relationship to a strong supporter of the political agenda of the administration, rather than on the qualifications of the individual, to a state classified (merit) system position in the Transportation Cabinet; 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 an individual based on his family relationship to a high ranking individual, rather than on his qualifications, to a state classified (merit) system position in the Transportation Cabinet created for this purpose; 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 process; and 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.

**CONCLUSION:** This case is pending.

### ***Case No. 08-003***

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**ALLEGATION:** That a former Consumer Complaint Investigator for the Office of Insurance violated KRS 11A.040(5) by accepting \$300 in payment from a consumer claimant for performance of her official duties.

**CONCLUSION:** In a Settlement Agreement, the employee admitted to violating KRS 11A.040(5) as alleged, agreed to pay a civil fine in the amount of \$300, received a public reprimand, and waived any right to appeal.

***Case No. 08-008***

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**ALLEGATION:** That a former employee of the Office of Insurance violated KRS 11A.020(1)(c) by using her official position or office to obtain financial gain for herself by depositing funds in the amount of \$2,068.66 collected for the Kentucky Employees Charitable Campaign into her personal bank account, expending the funds for personal use, and then failing to reimburse the funds for a period of five months; and violated KRS 11A.040(2) by knowingly receiving an interest or profit arising from the use or loan of public funds in her hands or to be raised through any state agency when she deposited public funds in the amount of \$2,068.66 raised through the Office of Insurance on behalf of the Kentucky Employees Charitable Campaign into her personal bank account.

**CONCLUSION:** The Commission determined that the former employee violated KRS 11A.020(1)(c) and KRS 11A.040(2) and imposed a civil penalty in the amount of \$250.

***Case No. 08-011***

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**ALLEGATION:** That a former employee of the Environmental and Public Protection Cabinet violated KRS 11A.020(1)(c) and (d) by using or attempting to use his official position to give himself a financial gain and an advantage by having a hotel charge the agency by which he was employed for his hotel stay while he was on approved leave.

**CONCLUSION:** Upon receipt of additional information, the Commission dismissed the charge.

***Case No. 08-012***

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**ALLEGATION:** That a former employee of the Environmental and Public Protection Cabinet violated KRS 11A.040(7) and (9) by accepting employment, compensation, or other economic benefit from a private company that does business with the state in a matter in which he was directly involved during the last 36 months of his tenure, within six months following the termination of his employment; and by representing the company within one year of the termination of his state employment before a state agency in a matter in which he was directly involved during the last 36 months of his tenure.

**CONCLUSION:** In a Settlement Agreement, the employee admitted to violating KRS 11A.040(7) and (9) as alleged, agreed to pay a civil fine in the amount of \$1,000, received a public reprimand, and waived any right to appeal.

***Case No. 08-013***

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**ALLEGATION:** That a Property Valuation Administrator violated KRS 11A.020(1)(c) by using his official position or office to obtain financial gain for a member of his family when he hired his daughter to work in his office.

**CONCLUSION:** This case is pending.

***Case No. 08-014***

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**ALLEGATION:** That a Property Valuation Administrator violated KRS 11A.020(1)(c) by using his official position or office to obtain financial gain for a member of his family when he hired his wife to work in his office.

**CONCLUSION:** This case is pending.

***Case No. 08-015***

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**ALLEGATION:** That a Property Valuation Administrator violated KRS 11A.020(1)(c) by using her official position or office to obtain financial gain for a member of her family when she hired her mother to work in her office.

**CONCLUSION:** This case is pending.

***Case No. 08-016***

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**ALLEGATION:** That a Property Valuation Administrator violated KRS 11A.020(1)(c) by using his official position or office to obtain financial gain for a member of his family when he hired his son to work in his office.

**CONCLUSION:** This case is pending.

***Case No. 08-017***

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**ALLEGATION:** That a Property Valuation Administrator violated KRS 11A.020(1)(c) by using her official position or office to obtain financial gain for a member of her family when she on two occasions promoted her son within her office.

**CONCLUSION:** This case is pending.

***Case No. 08-018***

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**ALLEGATION:** That a Property Valuation Administrator violated KRS 11A.020(1)(c) by using her official position or office to obtain financial gain for a member of her family when she hired her mother to work in her office.

**CONCLUSION:** This case is pending.

***Case No. 08-019***

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**ALLEGATION:** That a Property Valuation Administrator violated KRS 11A.020(1)(c) by using her official position or office to obtain financial gain for a member of her family when she hired her daughter to work in her office.

**CONCLUSION:** This case is pending.

***Case No. 08-020***

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**ALLEGATION:** That a Property Valuation Administrator violated KRS 11A.020(1)(c) by using his official position or office to obtain financial gain for a member of his family when he hired his daughter to work in his office.

**CONCLUSION:** This case is pending.

***Case No. 08-021***

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**ALLEGATION:** That a Property Valuation Administrator violated KRS 11A.020(1)(c) by using his official position or office to obtain financial gain for a member of his family when he promoted his wife to Chief Deputy within his office.

**CONCLUSION:** This case is pending.

***Case No. 08-022***

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**ALLEGATION:** That a Property Valuation Administrator violated KRS 11A.020(1)(c) by using her official position or office to obtain financial gain for a member of her family when she promoted her daughter within her office.

**CONCLUSION:** This case is pending.

***Case No. 08-023***

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**ALLEGATION:** That a Property Valuation Administrator violated KRS 11A.020(1)(c) by using her official position or office to obtain financial gain for a member of her family when she promoted her husband to Chief Deputy within her office.

**CONCLUSION:** This case is pending.

***Case No. 08-024***

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**ALLEGATION:** That a former Division Director II in the Environmental and Public Protection Cabinet failed to timely file a 2007 Statement of Financial Disclosure within the time period required by statute for the portion of the calendar year 2007 during which he was employed by the agency, in violation of KRS 11A.050(1)(b).

**CONCLUSION:** The Commission determined that the former employee violated KRS 11A.050(1)(b) as charged and imposed a civil penalty of \$1,000.

***Case No. 08-025***

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**ALLEGATION:** That a former employee in the Kentucky Department of Parks violated KRS 11A.020(1)(c) and (d) by using her official position to obtain financial gain for herself; and to secure or create privileges, exemptions, advantages, or treatment for herself or others in derogation of the public interest at large by misappropriating public funds.

**CONCLUSION:** In a Settlement Agreement, the former employee admitted to violating KRS 11A.020(1)(c) and (d) as alleged, agreed to pay a civil fine in the amount of \$500, received a public reprimand, and waived any right to appeal.

***Case No. 08-026***

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**ALLEGATION:** That a former employee of Fleet Management in the Finance Cabinet violated KRS 11A.020(1)(c) and (d) by using his official position to give himself a financial gain; and to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest at large by using state time and equipment in producing, selling, and distributing illegal copies of music and movies.

**CONCLUSION:** In a Settlement Agreement, the former employee admitted to violating KRS 11A.020(1)(c) and (d) as alleged, agreed to pay a civil fine in the amount of \$250, received a public reprimand, and waived any right to appeal.

***Case No. 08-027***

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**ALLEGATION:** That a former Secretary for the Transportation Cabinet violated KRS 11A.050(3)(e) by failing to disclose an ownership interest in a corporation on the 2007 Statement of Financial Disclosure that he filed with the Commission.

**CONCLUSION:** This case is pending.

***Case No. 08-028***

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**ALLEGATION:** That a former Special Assistant for the Cabinet for Health and Family Services violated KRS 11A.050(1) by failing to timely file a 2007 Statement of Financial Disclosure within the time period required by statute.

**CONCLUSION:** In a Settlement Agreement, the former employee admitted to violating KRS 11A.050(1) as alleged, agreed to pay a civil fine in the amount of \$100, received a public reprimand, and waived any right to appeal.

***Case No. 08-029***

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**ALLEGATION:** That a former employee of the Office of Employment and Training within the Department for Workforce Investment, Education Cabinet, violated KRS 11A.020(1)(c) and (d) by using her official position to obtain financial gain for herself; and to secure or create privileges, exemptions, advantages, or treatment for herself in derogation of the public interest at large by misappropriating public funds.

**CONCLUSION:** This case is pending.

# LITIGATION

## INTRODUCTION

All final orders of the Commission issued pursuant to an administrative hearing are appealable to circuit court. The Commission also may initiate court actions to collect unpaid fines and may initiate court actions where judicial intervention is necessary to enforce the orders of the Commission.

## COURT REVIEW OF ETHICS VIOLATIONS

**William L. Huffman v. Executive Branch Ethics Commission, Franklin Circuit Court, Division II, Civil Action No. 04-CI-01441; and Court of Appeals Case No. 2009-CA-000991.**

Mr. Huffman filed an appeal of the Commission's September 30, 2004, Final Order in which the Commission found clear and convincing evidence that Mr. Huffman violated the Code of Ethics on 14 counts by his improper use of sick leave and misuse of state resources, and which ordered that a civil penalty of \$2,500 be imposed along with a public reprimand. The Franklin Circuit Court upheld the Commission's Final Order, and Mr. Huffman appealed to the Court of Appeals. The appellate case is pending.

## COMMISSION-INITIATED ACTION

**Executive Branch Ethics Commission v. Commonwealth of Kentucky Office of the Governor; Governor's Office for Local Development; Commonwealth Office of Technology; Finance and Administration Cabinet; Personnel Cabinet; Commerce Cabinet; and Transportation Cabinet, Franklin Circuit Court, Division II, Civil Action 05-CI-1743**

The Commission filed this action seeking to have the Court enforce subpoenas which the Commission had served on the various defendants. By Agreed Order, the subpoenaed documents were eventually produced, with the exception of ones on which privilege claims were made.

**Executive Branch Ethics Commission v. 37 Unnamed Individuals, Franklin Circuit Court, Div. II, Civil Action No. 06-CI-01053**

The Commission filed a Petition for Relief pursuant to KRS 11A.090 asking the Franklin Circuit Court to issue an order requiring 37 individuals to comply with subpoenas earlier served upon them by providing the Commission with the sworn statements directed in the administrative subpoenas, or should they fail to do so, be held in contempt for their failure to comply. This litigation is related to the Commission's merit system hiring investigation, and is still pending.

**Executive Branch Ethics Commission v. Leela Flowers, Franklin Circuit Court, Div. II, Civil Action No. 09-CI-595**

The Commission filed this enforcement action against Ms. Flowers to collect a civil fine in the amount of \$250 imposed by the Commission in an administrative proceeding. This case is pending.

**Executive Branch Ethics Commission v. BTU Pipeline, Inc., Franklin Circuit Court, Div. I, Civil Action No. 08-CI-1752**

The Commission filed this enforcement action to collect a civil fine in the amount of \$1,000 imposed by the Commission against BTU Pipeline, Inc. for its failure to timely pay a required lobbyist fee. The Franklin Circuit Court entered a judgment against BTU Pipeline, Inc. in the amount of \$1,000 plus interest and costs.

**Executive Branch Ethics Commission v. Dennis R. Mills, Franklin Circuit Court, Div. II, Civil Action No. 09-CI-519**

The Commission filed this enforcement action against Mr. Mills to collect a civil fine in the amount of \$3,000 imposed by the Commission in an administrative proceeding. This case is pending.

**Executive Branch Ethics Commission v. Tammie Taylor, Franklin Circuit Court, Div. II, Civil Action No. 09-CI-755**

The Commission filed a Petition for Relief pursuant to KRS 11A.090 seeking an order requiring Ms. Taylor to comply with a subpoena served upon her earlier by providing the Commission with a sworn statement as directed in the administrative subpoena, or should she fail to do so, be held in contempt for her failure to comply. Ms. Taylor asserted her Fifth Amendment right against self-incrimination. This case is pending.

## **OTHER LITIGATION**

**Regarding Special Grand Jury Investigation, Franklin Circuit Court, Division II, MISC. #88**

In this ongoing proceeding, the Commission filed a motion seeking the release of the Grand Jury material relating to its merit hiring investigation. The Personnel Board did the same, with both motions being heard at the same time. The Judge ordered the release of all Grand Jury materials, including oral testimony, to the Commission, the Personnel Board, and the Kentucky Bar Association. This case remains open.

**Gregory D. Stumbo v. Executive Branch Ethics Commission, Floyd Circuit Court, Div. I, Civil Action No. 07-CI-184**

Mr. Stumbo, former state's Attorney General, in his individual capacity filed suit against the Commission itself as well as all five of its current members in their official capacities seeking relief from the Floyd Circuit Court of actions taken by the Commission and its officers in their official capacity by means of the Advisory Opinions 06-16 and 06-31. The Commission issued these opinions on its own initiative regarding whether a conflict existed for the Attorney General if the Office of the Attorney General was involved in the investigation or prosecution of the Governor. In Advisory Opinion 06-16, issued following the Commission's June 16, 2006, meeting, the Commission concluded that no conflict existed unless the Attorney General became a candidate for Governor, in which case the potential for conflict would present itself. Following a request for reconsideration from Mr. Stumbo, the Commission in Advisory Opinion 06-31, issued at its December 15, 2006 meeting, upheld its original opinion. By agreement of the parties, this case was dismissed without prejudice.

**Marc D. Williams v. Executive Branch Ethics Commission, Franklin Circuit Court, Div. I, Civil Action No. 07-CI-1448**

Mr. Williams sought to enjoin the Commission from conducting an administrative hearing due to a pending criminal investigation. The Court declined to take such action.

**Rickey L. Bartley v. Executive Branch Ethics Commission, et al., Pike Circuit Court, Div. I, Civil Action No. 07-CI-995**

Mr. Bartley, the Commonwealth's Attorney for the 35<sup>th</sup> Judicial Circuit, filed a Petition for Declaration of Rights against the Commission and included the other Commonwealth's Attorneys in Kentucky as Defendants. Mr. Bartley asserts that Commonwealth's Attorneys are not subject to KRS Chapter 11A. This case is pending.

**Commonwealth of Kentucky, Office of the Attorney General v. Commonwealth of Kentucky, Executive Branch Ethics Commission, et al., Franklin Circuit Court, Div. II, Civil Action No. 07-CI-1623**

The Attorney General sought a temporary injunction from the Court challenging the Commission's authority to receive and act upon informal complaints it received, as opposed to formal complaints submitted pursuant to certain regulatory requirements and signed under penalty of perjury. It had been made public that an informal complaint was filed with the Commission against the Attorney General and other employees of his office. The Court concluded that while the Commission could not solicit informal complaints, it could act upon informal complaints that it received, including the complaint pending against the Attorney General.

**James L. Adams v. Executive Branch Ethics Commission, Jefferson Circuit Court, Div. 9, Civil Action No. 08-CI-08191; and Court of Appeals Case No. 2009-CA-001064**

Mr. Adams appealed the Commission's Order denying his Motion to Dismiss the administrative proceeding filed against him on the grounds that the pardon issued by former Governor Ernie Fletcher on August 29, 2005 pardoning him for three counts of political discrimination, official misconduct, and criminal conspiracy precludes the Commission from enforcing KRS Chapter 11A. The Jefferson Circuit Court upheld the Commission's Order denying Mr. Adams' Motion to Dismiss. Mr. Adams appealed to the Court of Appeals, and the appellate case is pending.

**Richard Murgatroyd v. Executive Branch Ethics Commission, Franklin Circuit Court, Div. II, Civil Action No. 07-CI-1896**

Mr. Murgatroyd appealed the Commission's Order denying his Motion to Dismiss the administrative proceeding filed against him on the grounds that the pardon issued by former Governor Ernie Fletcher on August 29, 2005 pardoning him for sixteen counts of political discrimination, two counts of violation of rights of Executive Department employee, and one count of criminal conspiracy precludes the Commission from enforcing KRS Chapter 11A. This case is pending.

**Basil Turbyfill v. Executive Branch Ethics Commission, Boyle Circuit Court, Civil Action No. 08-CI-00148; and Court of Appeals Case No. 2009-CA-001394**

Mr. Turbyfill appealed the Commission's Order denying his Motion to Dismiss the administrative proceeding filed against him on the grounds that the pardon issued by former Governor Ernie Fletcher on August 29, 2005 pardoning him for one count of criminal conspiracy precludes the Commission from enforcing KRS Chapter 11A. The Boyle Circuit Court upheld the Commission's Order denying Mr. Turbyfill's Motion to Dismiss. Mr. Turbyfill appealed to the Court of Appeals, and the appellate case is pending.

**Betty Atkinson, et al. v. Executive Branch Ethics Commission, Franklin Circuit Court, Division I, Civil Action No. 08-CI-1798; and Court of Appeals Case No. 2009-CA-00**

The Commission initiated administrative actions against eleven Property Valuation Administrators (PVAs) after finding probable cause that each of the PVAs violated 11A.020(1)(c) by using his or her official position or office to obtain financial gain for a member of his or her family through employment or promotion of the family member within the PVA's office. The eleven PVAs filed a Petition for Declaration of Rights in the Franklin Circuit Court, seeking a declaration of rights that the Commission's interpretation of KRS 11A.020 is unconstitutional and is not supported by statutory or regulatory authority; and that the Commission does not have jurisdiction over PVAs because they are not subject to KRS Chapter 11A. The Franklin Circuit Court agreed that PVAs are not subject to KRS Chapter 11A, and the Commission appealed to the Court of Appeals. The appellate case is pending.

# EXECUTIVE AGENCY LOBBYING

## REGISTRATION

Any person engaged for compensation to influence, on a substantial basis, a decision to be made by an executive branch official or staff member concerning a state expenditure, grant or budgetary allocation of state funds must register with the Commission, along with his employer, and real party in interest, if applicable, as an executive agency lobbyist within ten days of the engagement. Thus, if a person attempts to secure business with the state by communicating and attempting to influence a state employee's decision, the person must register as an executive agency lobbyist if attempts are made involving state funds of over \$5000. Upon registration, an executive agency lobbyist is issued a registration card.

Registration as an executive agency lobbyist is not required if:

- ✓ Decisions involve no state funds or state funds of less than \$5000;
- ✓ Merely responding to a request for proposal or submitting a bid;
- ✓ Contacts with state officials are for information gathering only;
- ✓ Lobbying is conducted only during appearances before public meetings of executive branch agencies;
- ✓ Lobbyist is an employee of a federal, state or local government, of a state college or university, or of a political subdivision, and is acting within his official duty; or
- ✓ Exercising the constitutional right to assemble with others for the common good and petition executive branch agencies for the redress of grievances.

Executive agency lobbyists, employers, and real parties in interest registered with the Commission must update their registration and report to the Commission annually any expenditures made to or on behalf of an executive branch employee. In addition, executive agency lobbyists, employers and real parties in interest are required to report any financial transactions with or for the benefit of an executive branch employee. A copy of the required expenditure or financial transaction statement must be sent to the official or employee who is named by the executive agency lobbyist at least ten days prior to the date it is filed with the Commission.

Information explaining the requirements for executive agency lobbyists has been published in an *Executive Agency Lobbying Handbook* that is available free of charge to lobbyists, their employers, or other interested persons. Included in the *Handbook* are the registration forms required to be filed. The *Handbook* is also available on the Commission's website at <http://ethics.ky.gov/>.

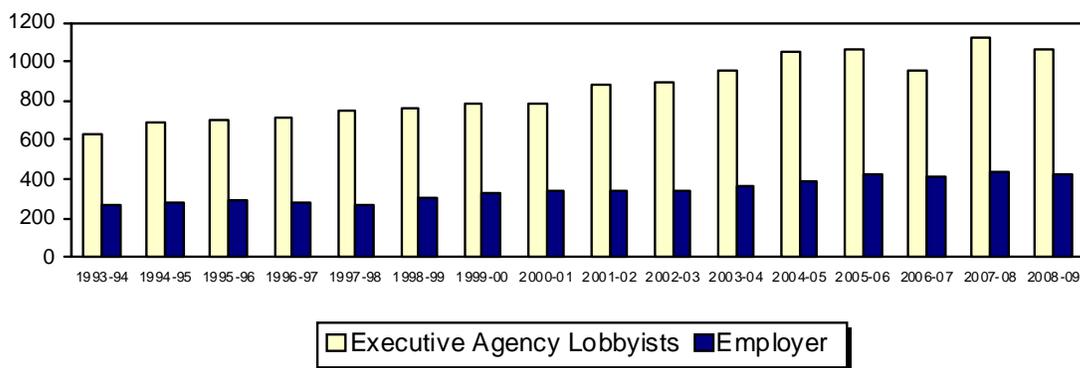
Lobbyists are required to identify on their registration statements the type of industry that they represent. The table below shows the type of industries represented as of June 30, 2008 and 2009.

TYPE OF INDUSTRY	2007-2008		2008-2009	
	NUMBER OF LOBBYISTS	NUMBER OF EMPLOYERS	NUMBER OF LOBBYISTS	NUMBER OF EMPLOYERS
Advocacy Groups/Non-Profit	26	13	21	11
Agriculture/Equine/Tobacco	28	11	22	11
Architects/Engineers/Construction	203	63	212	59
Arts/Tourism	5	2	7	1
Communications/Telecom	46	17	46	15
Computer/Information Systems/Internet	119	41	123	45
Criminal Justice/Corrections/Public Safety	18	8	19	9
Education/Workforce Training	39	13	44	15
Entertainment/Gaming /Hotel	50	17	32	18
Environmental Services	12	9	6	7
Financial Services/Investments/Insurance	151	53	148	59
Health Care/Hospital/Pharmaceuticals	208	92	205	86
Legal/Law Firm	15	7	16	6
Local Government/Economic Development	77	32	53	22
Manufacturing/Retail	15	10	15	11
Media/Public Relations	12	6	12	5
Minerals/Petroleum/Utilities/Energy	55	19	44	21
Personnel/Data Collection/Consulting	8	3	10	7
Transportation	32	15	32	15
<b>TOTAL</b>	<b>1119</b>	<b>431</b>	<b>1067</b>	<b>423</b>

The Commission maintains all registration statements filed by executive agency lobbyists, employers and real parties in interest. The statements are open records subject to inspection by the public. In addition, all statement information is maintained on a database so that such information may be cross-referenced between lobbyist, employer and real party in interest and is readily accessible to the general public.

As of June 30, 2008, 1119 executive agency lobbyists representing 431 employers were registered with the Commission; on June 30, 2009, 1067 executive agency lobbyists representing 423 employers were registered. A comparison of registered lobbyists and employers for each year is shown below.

### REGISTRATION OF EXECUTIVE AGENCY LOBBYISTS AND EMPLOYERS



### ENFORCEMENT ACTION

Any lobbyist, employer or real party in interest who fails to file an initial or updated registration statement or, in the case of an employer or real party in interest, fails to pay the \$125 as required by the lobbying laws may be fined by the Commission an amount not to exceed \$100 per day, up to a maximum fine of \$1,000. During fiscal year 2007-08 and 2008-09, the Commission levied the maximum fine of \$1000 to five employers. Fines were collected from the following three employers for their failure to file Updated Registration Statements and pay the \$125 registration fee:

- American Capital Holdings** - \$1,000
- HWT** - \$1,000
- The Columbus Organization** - \$1,000

The remaining two employers who were fined \$1,000 for failure to file and their status are as follows:

### **BTU Pipeline**

*Executive Branch Ethics Commission v. BTU Pipeline, Inc.*, Franklin Circuit Court, Div. I, Civil Action No. 08-CI-1752

The Commission filed this enforcement action to collect a civil fine in the amount of \$1,000 imposed by the Commission against BTU Pipeline, Inc. for its failure to timely pay a required lobbyist fee. The Franklin Circuit Court entered a judgment against BTU Pipeline, Inc. in the amount of \$1,000 plus interest and costs.

### **The Jockey's Guild**

The Jockey's Guild filed for bankruptcy after the fine order was issued for its failure to file the Updated Registration Statement and pay the \$125 registration fee. It has since filed the Updated Registration and paid the \$125 registration fee; however the Jockey's Guild requested exoneration of the \$1000 fine. The Commission voted to enforce payment of the fine and a proof of claim has been filed with the bankruptcy court. The bankruptcy case is still pending.

## **LEGISLATIVE HISTORY AND RECOMMENDATIONS**

On December 10, 1991, shortly after taking office, Governor Brereton C. Jones issued Executive Order 91-2, pertaining to standards of ethical conduct for executive branch employees. The executive order detailed prohibitions of employees, required financial disclosure by certain employees, and directed the Governor's general counsel to prepare ethics legislation for the 1992 General Assembly. This was the beginning of the code of ethics.

On April 12, 1992, Senate Bill 63 was passed by the General Assembly, creating the "Executive Branch Code of Ethics," codified as KRS Chapter 11A. The code became effective in July 1992. During the 1993 Special Session of the General Assembly, held to enact a legislative code of ethics, the Executive Branch Code of Ethics was amended to include a new section pertaining to executive agency lobbying, effective September 1993. Numerous amendments have been made to the code of ethics during subsequent sessions of the General Assembly.

### **2010 REGULAR SESSION LEGISLATIVE GOAL**

Although the Commission believes there are many changes that would improve the code of ethics, it limits its recommendation for the 2010 Regular Session of the Kentucky General Assembly to those proposals it believes will strengthen and restore trust in government officials and employees in the executive branch, listed below, as well as some necessary housekeeping issues.

**COMMISSION MEMBER NOMINATION** – Include other elected constitutional officers (the Attorney General and the Auditor of Public Accounts) in the nomination process of some of the commission members for the Governor to appoint. Attach the Commission to the Finance and Administration Cabinet for administrative purposes, rather than the Office of the Governor.

**BOARDS AND COMMISSIONS** – Prohibit board and commission members from contracting with the board or commission on which they serve; require board and commission members to disclose any potential conflict of interest they may have and abstain from related decisions; make board and commission members subject to gifts provisions of KRS Chapter 11A; and revise the definition of "officer" to include only those board and commission members who are salaried or are subject to the code of ethics per their enabling statutes, rather than the members of several non-salaried boards currently defined as officers (and thus subject to the entire code of ethics in Chapter 11A).

**WHISTLEBLOWER PROTECTION** – Include the Executive Branch Ethics Commission as one of the state agencies to which employees may bring to the attention possible violations of law without the fear of reprisal. (KRS 61.102).

**INVESTIGATIONS** – Allow the Commission to release evidence to the Personnel Board, along with the other agencies already named in KRS 11A.080(2)(a), for use by that agency in conducting investigations.

**PUBLIC SERVANTS** – Include as public servants those persons who perform state service on contract in a full-time position.

**ENTITLEMENTS** – Amend KRS 11A.040(4)(b) and (6) to specify that the exception is only for those receiving benefits, not administrative costs.

**NEGOTIATE FOR FUTURE EMPLOYMENT** - Prohibit a public servant from negotiating for future employment with a person or business with which the public servant is directly involved as part of his official duty.

**OUTSIDE EMPLOYMENT REPORTS** - Reduce the filing of outside employment reports by agencies from quarterly to annually.

**STATEMENT OF FINANCIAL DISCLOSURE** - Expand the filing deadline for statements of financial disclosure from 30 days to 90 days upon leaving state government; change KRS 11A.990(2) to state that salary will be withheld from the sixteenth day of noncompliance instead of the first.

**GIFTS LANGUAGE** - Increase gifts limitation per source to \$50 for a single calendar year.

# PUBLIC INFORMATION

## MEETINGS

The Commission holds bi-monthly meetings to consider advisory opinion requests, conduct business, and issue orders related to administrative proceedings. Investigations and litigation reviews are conducted in closed, executive session. Notice of open meetings is sent to the press pursuant to Kentucky's Open Records Law, KRS 61.810. The public is welcome to attend open meetings.

## PUBLIC RECORDS

The Commission keeps on file many documents that are public record and are available for public inspection during normal business hours (8:00 a.m. to 4:30 p.m.) on regular state workdays.

-  Financial Disclosure Statements  
Filed by elected officials, officers, and candidates for office within the executive branch
-  Administrative Proceedings Case Files  
Maintained on all administrative actions taken by the Commission
-  Commission Meeting Minutes (open session only)
-  Executive Agency Lobbyist, Employer, and Real Party in Interest Registrations
-  Executive Agency Lobbyist Listings
-  Economic Development Incentive Disclosure Statements
-  Gift Disclosure Statements
-  Outside Employment Reports

## EDUCATIONAL MATERIALS

-  *Biennial Reports*
-  *Guide to the Executive Branch Code of Ethics*
-  *Advisory Opinions*
-  *Executive Agency Lobbying Handbook*
-  Brochures:
  - *Acceptance of Gifts*
  - *Leaving State Government?*
  - *Ethical Guidelines for Boards and Commission Members*
  - *Executive Branch Ethics Commission (general information)*

## **CODE OF ETHICS**

KRS Chapter 11A requires that public servants work for the benefit of the people of the Commonwealth. The code of ethics recognizes that public office is a public trust where government is based upon the consent of its citizens. Citizens are entitled to have complete confidence in the integrity of their government.

- Employees must be independent and impartial;
  
- Decisions and policies must not be made outside the established processes of government;
  
- Employees should not use public office to obtain private benefits;
  
- Employees' actions should promote public confidence in the integrity of government;
  
- Employees should not engage or be involved in any activity that has the potential to become a conflict of interest with their state employment.



**COMMONWEALTH OF KENTUCKY**

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