

COMMONWEALTH OF KENTUCKY

**EXECUTIVE BRANCH  
ETHICS COMMISSION**



**BIENNIAL REPORT**

**JULY 1, 2009 - JUNE 30, 2011**

*Printed with State Funds*  
2011

# EXECUTIVE BRANCH ETHICS COMMISSION

## BIENNIAL REPORT

FISCAL YEARS ENDING JUNE 30, 2010 AND 2011

### COMMISSION MEMBERS

Ronald L. Green

Chairperson, elected November 8, 2010  
Vice-Chair, July 11, 2008 – November 8, 2010

Angela Edwards

Vice-Chair, elected November 8, 2010

William David Denton

Judge William L. Knopf (Ret.)

William G. Francis

Gwendolyn R. Pinson

(Member through July 14, 2010)

Jeanie Owen Miller

(Member through December 30, 2009)

Nicholas Patrick Cambron

(Member through September 9, 2009)

### STAFF

John R. Steffen, Executive Director  
Kathryn H. Gabhart, General Counsel  
Jeffrey M. Jett, Investigator  
Debbie Briscoe, Executive Assistant  
Bill Trigg, Staff Assistant  
Jenny May, Administrative Assistant

*Dana Nickles, General Counsel (June 16, 2008 through February 28, 2011)*

#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, 2010, and June 30, 2011 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/>

RONALD L. GREEN  
CHAIR  
ANGELA LOGAN EDWARDS  
VICE CHAIR  
W. DAVID DENTON  
WILLIAM L. KNOFF  
WILLIAM G. FRANCIS

July 11, 2011

JOHN R. STEFFEN  
EXECUTIVE DIRECTOR  
KATHRYN H. GABHART  
GENERAL COUNSEL  
43 FOUNTAIN PLACE  
FRANKFORT, KY 40601  
(502) 564-7954  
FAX: (502) 564-2686

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, 2010 and June 30, 2011. 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.

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 black ink, appearing to read "Ronald L. Green".

Ronald L. Green, 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.



### **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 and Chairperson November 8, 2010.

An Attorney in Lexington, Kentucky, Mr. Green is a partner in the firm of Green & Chesnut PLLC. 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 7, 2007 to the unexpired term of Thomas Handy, who had resigned. Ms. Pinson served the remainder of the unexpired term until July 14, 2010. She served as Chair of the Commission from July 11, 2008 through July 14, 2010.

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 was to 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. She resigned on December 30, 2009.

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 LOGAN EDWARDS**

Governor Steven L. Beshear appointed Ms. Edwards to replace Rutherford B. Campbell, Jr., who resigned on September 23, 2008. 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 by the Auditor of Public Accounts.

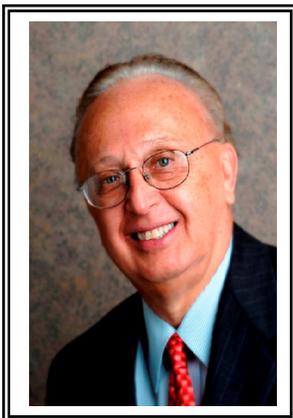
An attorney in Louisville, Kentucky, Ms. Edwards is a partner in the firm of Dinsmore and Shohl, LLP. Ms. Edwards earned a degree in finance at Transylvania University and her law degree at the University of Kentucky.



### **NICHOLAS PATRICK CAMBRON**

Governor Steven L. Beshear appointed Mr. Cambron to replace J. Quentin Wesley, who resigned on November 16, 2008. Mr. Cambron served the remainder of the unexpired term ending July 14, 2009 and was subsequently reappointed July 15, 2009 to serve a four-year term; however, Mr. Cambron resigned early, on September 9, 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.



### **WILLIAM DAVID DENTON**

Governor Steven L. Beshear appointed Mr. Denton on October 29, 2009 to replace Nick Cambron, who resigned on September 9, 2009. Mr. Denton will serve the remainder of the unexpired term ending July 14, 2013.

Mr. Denton is the managing partner of the Paducah, Kentucky law firm, Denton & Keuler, LLP. He is a graduate of Murray State University and University of Kentucky, College of Law.

### **JUDGE WILLIAM L. KNOPF (RET.)**



Governor Steven L. Beshear appointed Judge Knopf to replace Jeanie Owen Miller, who resigned December 30, 2009. Judge Knopf will serve the remainder of the unexpired term ending July 14, 2012. He was appointed under the requirements of Executive Order 2008-454 from a list of nominees submitted by the Attorney General.

Judge Knopf is a native of Louisville/ Jefferson County. Prior to his retirement, he served on the Kentucky Court of Justice for 27 years in the capacity of District Court Judge, Circuit Court Judge, Kentucky Court of Appeals Judge, and then as a Senior Judge. Prior to the bench, he was an Assistant Commonwealth's Attorney and in the private practice of law. He earned a bachelor degree in business administration from Loyola University New Orleans and a law degree from the Brandeis School of Law at the University of Louisville.

### **WILLIAM G. FRANCIS**



Governor Steven L. Beshear appointed Mr. Francis to replace Gwen Pinson, whose term expired July 14, 2010. Mr. Francis' term will expire July 14, 2014.

Mr. Francis is a partner in the Prestonsburg law firm of Francis, Kendrick, & Francis. He earned a bachelor's degree in political science at the University of Kentucky, a master's degree in public administration at Eastern Kentucky University, and his law degree at the University of Kentucky College of Law.

## 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.

**JOHN STEFFEN**



**KATHRYN H. GABHART**

### 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.

**Dana Nickles** (*General Counsel June 16, 2008 through February 28, 2011*)



**JEFFREY JETT**

### INVESTIGATOR

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



## **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 all personnel matters for the Commission staff and its members. This position acts as Clerk of the Administrative Proceedings process and maintains all legal records related to the Commission. The Executive Assistant serves as Secretary for Commission meetings, which includes preparation of the agenda, the minutes following the meetings, and any correspondence relative to the actions of the Commission. The Executive Assistant coordinates the training component of the Commission by registering participants, preparing training materials, and maintaining the training participant database.

**DEBBIE BRISCOE**



**JENNY MAY**



The **Administrative Assistant** manages the process for registration and reporting for executive agency lobbying which includes maintaining the database for executive agency lobbyists and their employers. This position prepares statistical information and oversees the publication of the Commission's Biennial Report. Other duties include handling purchases and billings for the agency, serving as 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.

**BILL TRIGG**



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.

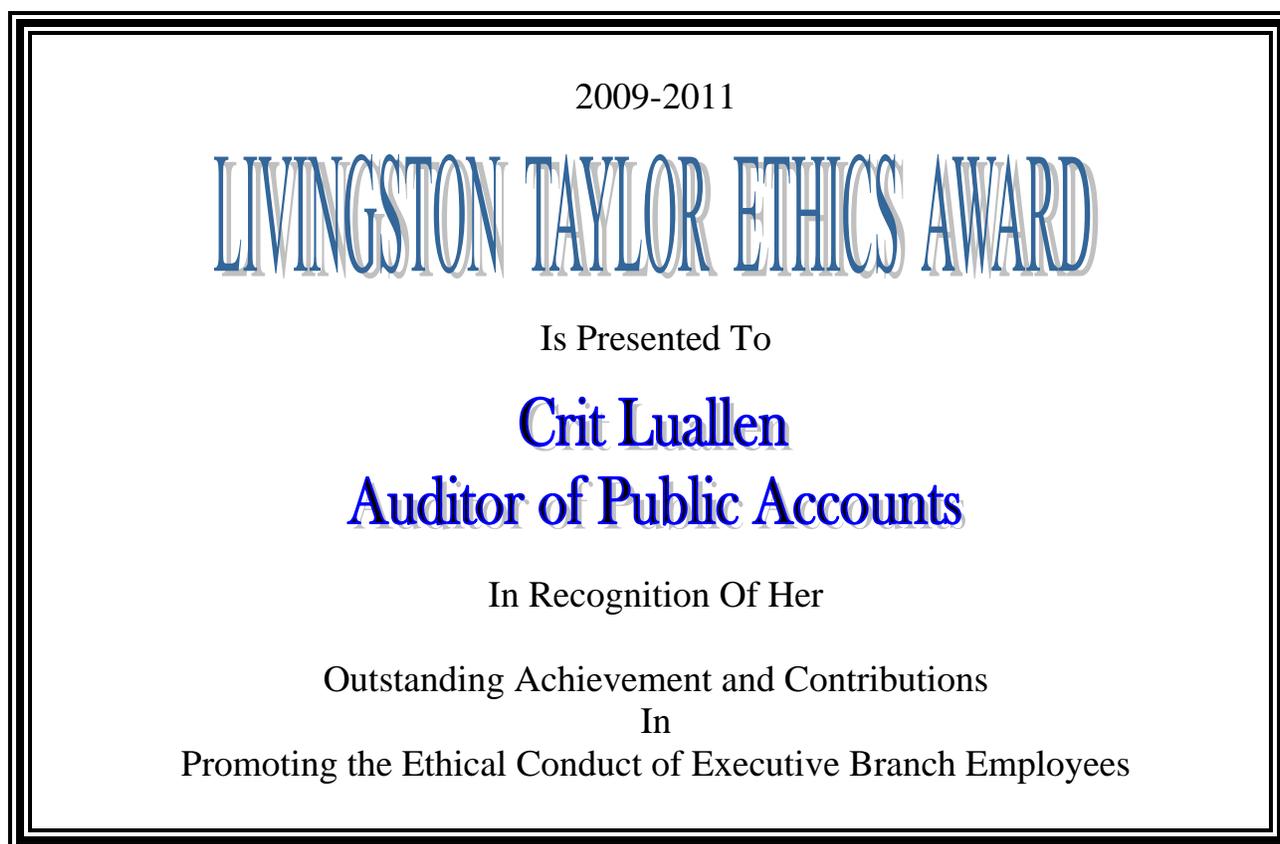
The **Student Interns** assist the staff with a variety of assignments ranging from processing mail to database work. Student Interns who served the Commission during some part of the biennium include:

**MEGAN HALL**

## 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.

\* \* \* \* \*



\* \* \* \* \*

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.



Crit Luallen was elected the Commonwealth of Kentucky’s forty-seventh Auditor of Public Accounts in November 2003 and re-elected in 2007 in what was her first foray into elective politics after a distinguished career in public service. Her service began in 1974 as a campaign staff member to Wendell Ford and culminated in her nearly seven years as Secretary of the Governor’s Executive Cabinet under Governor Paul Patton. As such, Crit Luallen was the Chief Operating Officer for Kentucky with responsibility for more than 35,000 full-time employees and a budget of \$17 billion. Luallen also served as State Budget Director, Secretary of both the Finance and Administration Cabinet and the Kentucky Tourism Cabinet, Commissioner of the Kentucky Department of the Arts, and Special Assistant to the Governor. In 2001 Luallen was awarded the National Excellence in Leadership Award by Women Executives in State Government.

As the 2011 recipient of the Livingston Taylor Ethics Award, Ms. Luallen was recognized for her non-partisan service as the State Auditor for the past eight years, during which time she developed a reputation as a diligent investigator of fraud and corruption across the Commonwealth. During her tenure as State Auditor, she uncovered millions of dollars in government fraud and questionable expenditures and referred a record number of cases to law enforcement officials. In an effort to ensure government efficiency and protect taxpayers, the office expanded the use of performance auditing and special investigations.

“One of my goals is that the Auditor’s Office not just focus on finding wrongdoing and saying ‘gotcha’. I want this office to bring value to the process of improving government efficiency.”

Her proven dedication to improve public accountability and promote the ethical behavior not only of state employees within executive branch agencies, but of officials within other entities into which public funds flowed, embodies the achievement and contribution to the ethical principles of good government that the Livingston Taylor Ethics Award was created to recognize

# BUDGET

## TWO-YEAR BUDGET ANALYSIS

The Commission's budget and expenditures for fiscal years 2009-10 and 2010-11 are detailed below.

	<u>FISCAL YEAR</u>		<u>TOTAL FOR</u>
	<u>2009-10</u>	<u>2010-11</u>	<u>BIENNIUM</u>
<b>ALLOTMENTS</b>			
General Fund	\$456,600	\$459,600	\$916,200
Agency Fund	56,581	60,500	117,081
Balance Forward	<u>34,461</u>	<u>56,932</u>	<u>91,393</u>
<b>TOTAL</b>	<u><b>\$547,642</b></u>	<u><b>\$577,032</b></u>	<u><b>\$1,124,674</b></u>
<b>EXPENDITURES</b>			
Personnel Costs	\$418,930	\$422,130	\$841,060
Operating Expenses	71,780	64,591	136,371
Grants, Loans & Benefits	0	0	0
Capital Outlay	<u>0</u>	<u>0</u>	<u>0</u>
<b>TOTAL</b>	<u><b>\$490,710</b></u>	<u><b>\$486,721</b></u>	<u><b>\$977,431</b></u>
<b>ALLOTMENT OVER EXPENDITURES</b>			
Reverted to general fund	\$ 0	\$ 0	\$ 0
Retained in agency fund	<u>56,932</u>	<u>90,311</u>	<u>147,243</u>
<b>TOTAL</b>	<u><b>\$ 56,932</b></u>	<u><b>\$ 90,311</b></u>	<u><b>\$ 147,243</b></u>

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<b>REVENUE FROM EMPLOYERS OF EXECUTIVE AGENCY LOBBYISTS</b>		
	<b>2009-2010</b>	<b>2010-2011</b>
<b>EMPLOYER REGISTRATION FEES (AGENCY FUND REVENUE)</b>	\$57,500.00	\$60,750.00
<b>LOBBYISTS FINES (GENERAL FUND REVENUE)</b>	2,209.46	0
<b>TOTAL COLLECTED</b>	<b>\$59,709.46</b>	<b>\$60,750.00</b>

<b>REVENUE FROM CIVIL PENALTIES ISSUED</b>		
	<b>2009-2010</b>	<b>2010-2011</b>
<b>FINES FROM CURRENT AND FORMER EMPLOYEES (GENERAL FUND)</b>	\$9,150.00	\$15,519.49

## 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 2009-2010, the staff provided advice to approximately 619 individuals and to approximately 596 persons during fiscal year 2010-2011. The following table shows, by subject matter, the approximate number of recorded inquiries received during the biennium.

SUBJECT MATTER	NUMBER OF INQUIRIES	
	2009-10	2010-11
Advisory Opinions	6	4
Campaign Activity	21	11
Code of Ethics for Boards and Commissions	17	12
Complaints	32	20
Conflict of Interest	119	79
Executive Agency Lobbying	144	209
Financial Disclosure	84	86
General Information	47	32
Gifts	36	37
Investigations	9	10
Jurisdiction	15	8
Legislation	17	2
Litigation	1	7
Outside Employment	33	24
Post-employment	11	28
Request for Material	12	11
Training	<u>15</u>	<u>24</u>
<b>TOTAL</b>	<b>619</b>	<b>596</b>

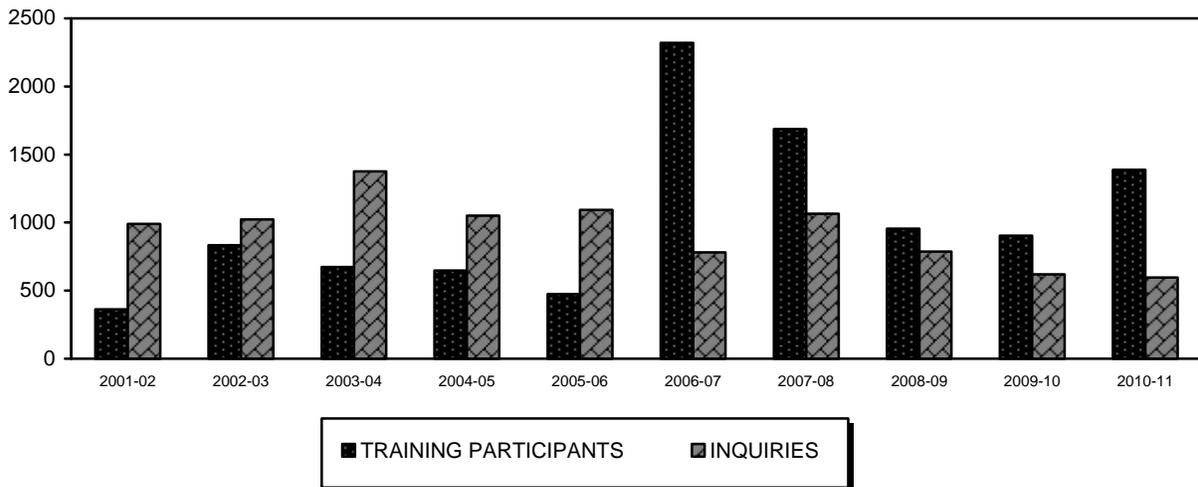
## TRAINING CLASSES

The Executive Branch Ethics Commission offers ethics classes on a quarterly basis to executive branch employees, and also provides ethics classes to individual state agencies, executive agency lobbyists, and members of executive branch regulatory and policy-making boards and commissions upon request. Online training classes are also offered through the Governmental Services Center.

NUMBER OF:	2009-10	2010-11	TOTAL
Training Classes Provided for State Agencies	22	27	49
Training Classes Provided to Boards and Commissions	11	5	16
Training Classes Provided as ongoing on-line course	1	1	2
Training Classes Provided to Ethics Officers	1	1	2
Training Classes Provided for Lobbyist/Other Organizations	1	1	2
<b>TOTAL TRAINING CLASSES</b>	<b>36</b>	<b>35</b>	<b>71</b>

<u>Total Number of Participants Trained</u>	
2009-2010	903
2010-2011	1387
<b>Total</b>	<b>2290</b>

### Comparison of Contacts 2001-2011



## 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, financial disclosure, and administrative actions. 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 Orders 2008-454 and 2009-882.

During the biennium, the Commission worked with Kentucky.gov to redesign and leverage a content management solution to maintain the website. Due to this change, the Commission's staff is now able to directly update the website, rather than having to have the changes made by another agency. This enables the updates to be performed in a more timely and efficient manner, and has resulted in a cost-savings to the agency.

The screenshot shows the website for the Executive Branch Ethics Commission of the Commonwealth of Kentucky. The browser window is titled "Ethics Commission Home - Windows Internet Explorer" and the address bar shows "http://ethics.ky.gov/Pages/default.aspx". The website features a blue header with the commission's name and logo. A navigation menu on the left includes links for Commission Members and Staff, Advisory Opinions, Executive Agency Lobbying, State Employee Resources, Publications, Ethical Guidelines for Boards and Commissions, Administrative Actions, and Legal Resources. The main content area is titled "Home" and includes a section on "Authority" which states that the commission's enabling statute is embodied in Kentucky Revised Statute Chapter 11A. To the right, there are sections for "Next Meeting" (Friday, December 2, 2011) and "Upcoming Ethics Training" (New Date: Tuesday, October 18, 2011). The footer includes contact information for John R. Steffen, Executive Director.

## 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, 95 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 as well as the general public.

<b>PUBLICATION</b>	<b>LATEST DATE OF PUBLICATION/REVISION</b>
<i>Acceptance of Gifts</i> (brochure)	July, 2000
<i>Executive Agency Lobbying Handbook</i>	January, 2007
<i>Leaving State Government?</i> (brochure)	February, 2005
<i>Guide to the Executive Branch Code of Ethics</i> (booklet)	May, 2007
<i>Biennial Reports (1993 – 2009)</i> (bound by each biennium)	December, 2009
<i>Advisory Opinions (1992 – 2008)</i> (bound by year)	November, 2009
<i>Executive Branch Ethics Commission</i> (General Information brochure)	April, 2011
<i>Ethical Guidelines for Members of Boards &amp; Commissions</i> (brochure)	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, 2009- JUNE 30, 2011**

The Commission issued 14 advisory opinions during the 2009-2010 fiscal year, and 7 during the 2010-2011 fiscal year. Additionally, the Commission issued 19 advisory letters during fiscal year 2009-2010 and 9 during fiscal year 2010- 2011. See below the opinions issued by primary topic. Following are the summaries of the advisory opinions issued.

## ADVISORY OPINIONS, BY PRIMARY TOPIC

<u>Topic</u>	<u>Number Issued</u>
General Conflicts of Interest .....	6
Gifts/Travel Expenses .....	7
Outside Employment/Self-Employment .....	4
Solicitation .....	2
Endorsement.....	2
<b>TOTAL</b>	<b><u>21</u></b>

## SUMMARY OF OPINIONS

July 1, 2009 - June 30, 2011

### July 1, 2009- June 30, 2010

**Advisory Opinion 09-20:** Microsoft eLearning vouchers may be distributed to the citizens of the Commonwealth of Kentucky through the Education and Workforce Development Cabinet. The vouchers are gifts to the citizens of Kentucky and not to the agency. The eLearning voucher program is an allowable partnership pursuant to KRS Chapter 11A and would not constitute an impermissible endorsement of Microsoft Corporation.

**Advisory Opinion 09-21:** A member of the Kentucky Board of Speech-Language Pathology may serve in a leadership role as Licensure Board Liaison for the Kentucky Speech Language Hearing Association, but the board member would be required to abstain from participating in practically all matters that come before the board. A member of the Kentucky Board of Speech-Language Pathology may serve as Pediatric Program Conference Chair for the Kentucky Speech Language Hearing Association.

**Advisory Opinion 09-22:** It would not be a conflict of interest for the Director of Biofuels to accept an outside consulting agreement with an out-of-state bank to assist in the sale of certain idle bio fuel manufacturing assets located in West Texas.

**Advisory Opinion 09-23:** A commissioner of the Public Service Commission may serve on the board of directors of a local hospital that receives electricity from a regulated electric utility pursuant to a special contract tariff, if the commissioner abstains from any and all matters involving the PSC's review of that contract. Further, the commissioner may serve on the board of directors even though a regulated electric utility has made significant contributions to a non-profit foundation that the commissioner previously led that supports the hospital, so long as he abstains from matters involving that utility for a reasonable period of time.

**Advisory Opinion 09-24:** It would be a conflict of interest for an Administrative Branch Manager within the Provider Services Branch of Program Integrity with the Department for Medicaid Services to offer credentialing/ consulting services to assist health care professionals in completing enrollment applications for private insurance health plans if those professionals were participating in the Medicaid program or involved in the enrollment process to become Medicaid providers.

**Advisory Opinion 09-25:** A member of the Governor's executive staff may accept wedding gifts from persons or businesses that do business with, are regulated by, are seeking grants from, are involved in litigation against, or are lobbying or attempting to influence the Office of the Governor, provided the gifts are reasonable in value.

**Advisory Opinion 09-26:** A member of the Governor's executive staff may accept wedding gifts from persons or businesses that do business with, are regulated by, are seeking grants from, are involved in litigation against, or are lobbying or attempting to influence the Office of the Governor, provided the gifts are reasonable in value.

**Advisory Opinion 09-27:** Regional Librarians and other staff members of the Kentucky Department for Libraries and Archives may accept a stipend for serving as mentors for public library staff members who are taking college classes toward the completion of associate's and bachelor's degrees at Bluegrass Community and Technical College and Northern Kentucky University through a program funded by a federal grant.

**Advisory Opinion 09-28:** Assuming he abstains from any involvement in any matters that directly involve his private institution or that would affect his institution differently than any other similarly situated private postsecondary institution, not only may a member of the Council on Postsecondary Education be President of a private postsecondary institution licensed by the Council, he may continue to serve as Chair of the Council as well.

**Advisory Opinion 09-29:** The General Counsel of the Kentucky Real Estate Commission may accept wedding gifts and a bridal shower from persons or businesses that do business with, are regulated by, are seeking grants from, are involved in litigation against, or are lobbying or attempting to influence the actions of the Kentucky Real Estate Commission, provided the gifts and bridal shower are reasonable in value.

**Advisory Opinion 09-30:** Engaging in health and wellness ventures in partnership with First Onsite clinics or not-for-profit organizations would not be considered an “endorsement” by the Department of Employee Insurance and other health and wellness activities so long as the partnering follows certain guidelines and it provides a benefit to the Commonwealth. Further, if permitted by the contractual terms of the contract, First Onsite may, on its own initiative, facilitate a mobile mammography unit, health screening services and other health and wellness ventures.

**Advisory Opinion 09-31:** The Director of Research and Statistics in the Office of Employment and Training, Workforce Development Cabinet, may receive an honorarium and travel expenses for making presentations to out of state agencies on his own time, so long as he makes a clear distinction between his official position and his private interest.

**Advisory Opinion 10-1:** There is no conflict of interest requiring the Secretary of State, who is running for statewide office, to abstain from performing his statutory duty as chair of the State Board of Elections.

**Advisory Opinion 10-2:** The Division of Compliance Assistance in the Department for Environmental Protection, Energy and Environment Cabinet, may solicit public-private partnerships, to include entities and persons regulated by the Department, for the purpose of reducing and preventing environmental crimes

### **July 1, 2010 - June 30, 2011**

**Advisory Opinion 10-3:** The Department of Corrections may not accept a gift in the form of a 40mm Single Shot Launcher from a vendor under the exception to the gifts rule provided for in KRS 11A.045(1) due to the concern that it would create an appearance of impropriety.

**Advisory Opinion 10-4:** A deputy Property Valuation Administrator may co-own a real estate brokerage business with a partner who conducts business in the county in which the deputy PVA is employed as long as the deputy PVA does not financially benefit from the partner conducting business in that county.

**Advisory Opinion 10-5:** A state regulator may, with some limitations, use state time and resources to promote membership and participation by comparable regulators from other jurisdictions in an international professional association comprised of such regulators if such use of state time and resources is approved by agency management.

**Advisory Opinion 10-6:** The Department of Corrections may not accept a gift in the form of \$70,000 in Correctional Officer uniforms from a vendor under the exception to the gifts rule provided for in KRS 11A.045(1) due to the concern that it would create an appearance of impropriety.

**Advisory Opinion 10-7:** A state regulator may perform work as an independent contractor for a Third Party Certification firm under the Interstate Milk Shippers International Certification Pilot Program so long as he does not use state time, personnel, or property to perform the work.

**Advisory Opinion 11-01:** NUMBER VOIDED

**Advisory Opinion 11-02:** It is a conflict of interest for an appointed Commissioner of the Kentucky Real Estate Commission to simultaneously serve in the elected position of Director-at-Large on the Board of Directors for the Kentucky Association of Realtors®, while also serving as Chair of that association's Government Affairs Committee and as Chair, Board of Trustee, R-PAC, which is the political action committee of the Greater Louisville Association of Realtors®.

**Advisory Opinion 11-03:** The Kentucky Horse Racing Commission may accept, as an exception to the gifts rule provided for in KRS 11A.045(1), access to a nationwide database containing licensing and rule infractions data, horse ownership data, and horse performance data from a company with which they do business.

## **SUMMARY OF EXCEPTIONS**

**July 1, 2009-June 30, 2011**

### **July 1, 2009-July 30, 2010**

**Exception No. 2009-3 (Advisory Opinion 09-25):** A member of the Governor's executive staff may accept wedding gifts from persons or businesses that do business with, are regulated by, are seeking grants from, are involved in litigation against, or are lobbying or attempting to influence the Office of the Governor, provided the gifts are reasonable in value.

**Exception No. 2009-4 (Advisory Opinion 09-26):** A member of the Governor's executive staff may accept wedding gifts from persons or businesses that do business with, are regulated by, are seeking grants from, are involved in litigation against, or are lobbying or attempting to influence the Office of the Governor, provided the gifts are reasonable in value.

**Exception No. 2009-5 (Advisory Opinion 09-29):** The General Counsel of the Kentucky Real Estate Commission may accept wedding gifts and a bridal shower from persons or businesses that do business with, are regulated by, are seeking grants from, are involved in litigation against, or are lobbying or attempting to influence the actions of the Kentucky Real Estate Commission, provided the gifts and bridal shower are reasonable in value.

**July 1, 2010-July 30, 2011**

**Exception No. 2011-1 (Advisory Opinion 11-03):** The Kentucky Horse Racing Commission may accept, as an exception to the gifts rule provided for in KRS 11A.045(1), access to a nationwide database containing licensing and rule infractions data, horse ownership data, and horse performance data from a company with which they do business.

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, Kentucky, 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 2009 and 2010.

### FINANCIAL DISCLOSURE STATEMENTS

	CALENDAR YEAR 2009		CALENDAR YEAR 2010	
	<u>#</u>	<u>% of Total</u>	<u>#</u>	<u>% of Total</u>
Statements Filed Timely	1192	97%	1284	95%
Active Officers Filed Late/ Salary Withheld*	22/1	2%	57/2	4%
Former Officers Filed Late**	6	<1%	6	<1%
Former Officers Investigated for Failure to File Timely	0		0	
Former Officers Investigated for Failure to File Complete	0		0	
<b>TOTAL REQUIRED FILINGS***</b>	1220		1347	

\*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.

\*\*These were filed before Commission action was recommended.

\*\*\*The discrepancy in CY 2009 and CY 2010 totals was largely the product of Property Valuation Administrators not filing for CY 2009 due to pending litigation.

### 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.

## **MONTHLY NOTICES**

The Commission has worked with the Personnel Cabinet to initiate a process whereby the Personnel Cabinet notifies the Commission on a monthly basis of officers who have left their positions during the previous month. This enables the Commission staff to remind the former officers of the 30-day filing requirement for those leaving during the calendar year. This process has proven very helpful in reducing the number of former officers who file late, thereby reducing the need for further action by the Commission. The process was instrumental in producing 102 filings during or shortly after CY 2009 and 117 filings during or shortly after CY 2010.

## **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 blank Statement of Financial Disclosure 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.

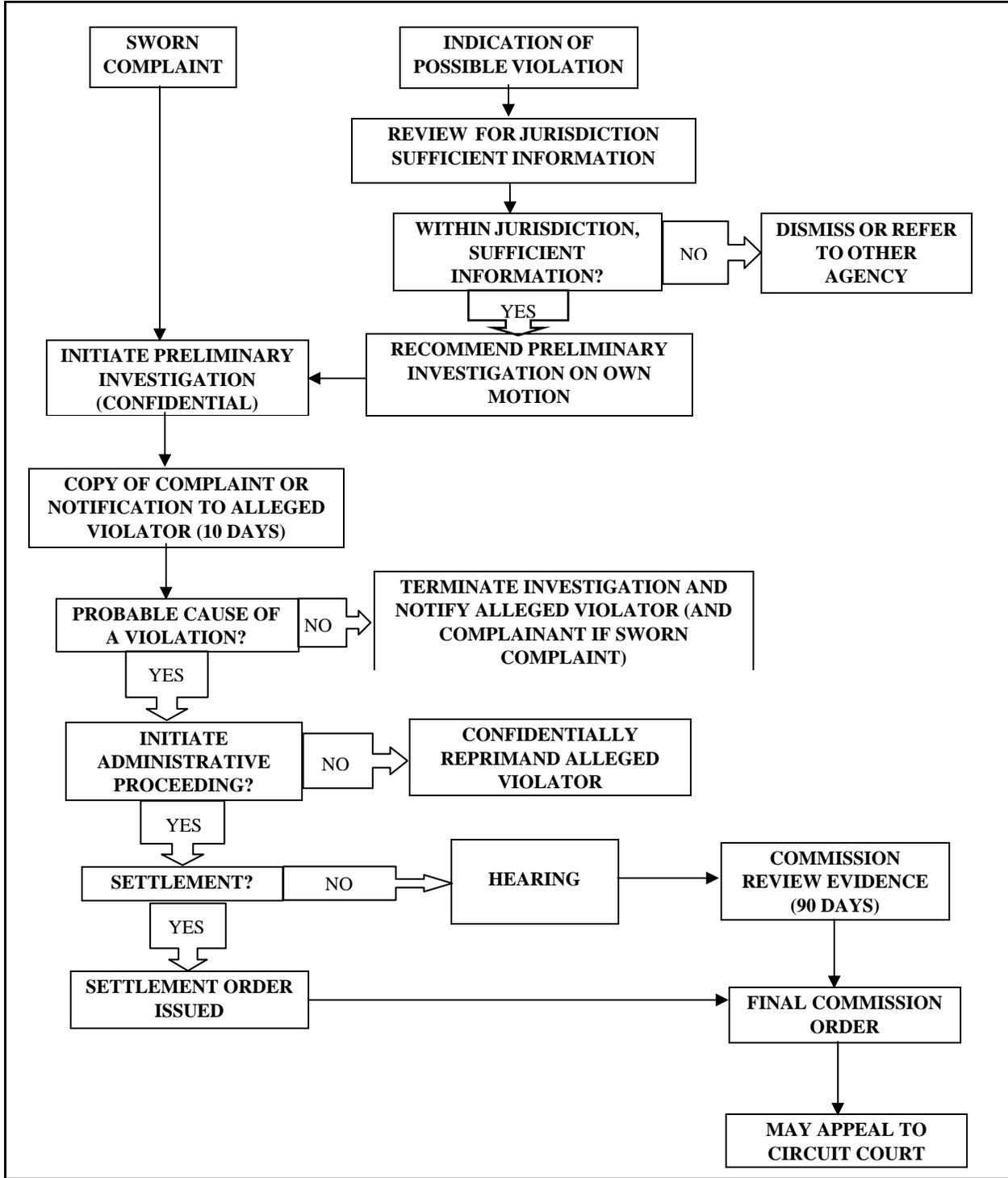
## **INVESTIGATIONS**

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.

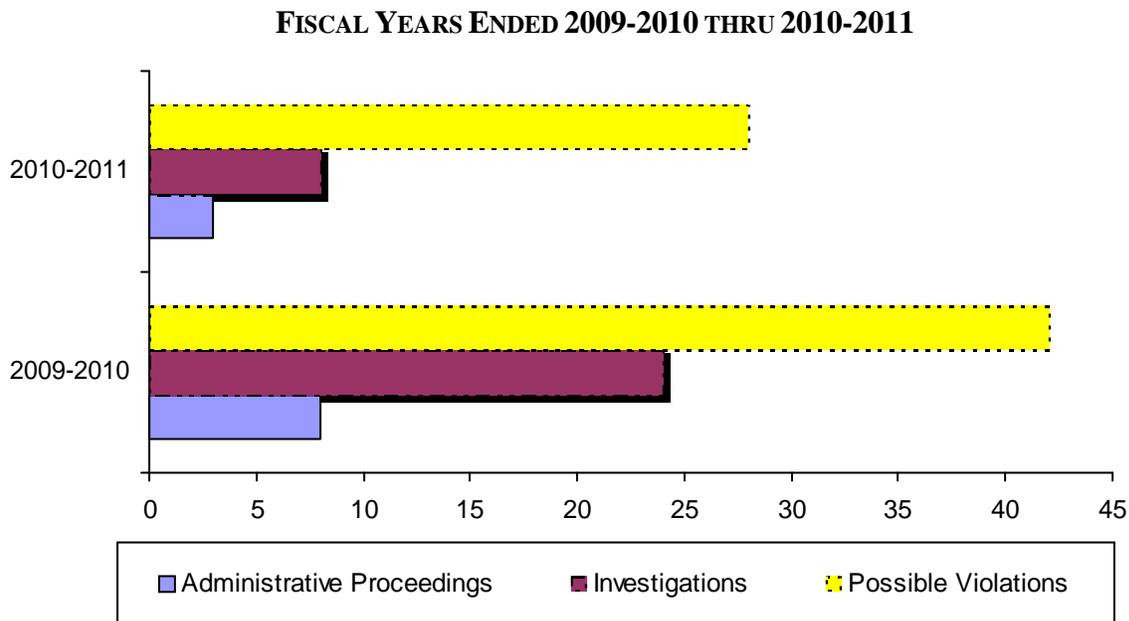
If the Commission determines, as a result of a preliminary investigation, that the facts are not sufficient to find probable cause of a violation of the code of ethics, the Commission must terminate the investigation and notify the complainant, if any, and the alleged violator in writing. The Commission 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>2009--2010</u>	<u>2010--2011</u>
Possible Violations Reviewed	39	27
Investigations Initiated	27	8
Investigations Terminated	20	1
Confidential Reprimands	12	0
Administrative Proceedings Initiated	11	5
Cases Referred To Other Agencies	4	2
Employees Penalized	11	7
Investigations Active at Fiscal Year End	0	2

## 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, 21 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. Twelve investigations showed probable cause of a violation; however, due to mitigating circumstances, the alleged violators were confidentially reprimanded. Two investigations remained active as of June 30, 2011. In 16 other investigations, the Commission found probable cause of violations and issued initiating orders for administrative proceedings. The proceedings are detailed as follows:

## ADMINISTRATIVE ACTIONS JULY 1, 2009 THROUGH JUNE 30, 2011

### ***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:** In a Settlement Agreement, while stating that he was not aware or did not know that his actions were in violation of KRS Chapter 11A, the employee agreed that the factual allegations as set forth in the Commission’s Initiating Order, if proven true at a hearing, could result in a determination of multiple violations of KRS 11A.020(1)(a), (b) and (d) as stated in the Commission’s Initiating Order. The employee agreed to pay a civil fine in the amount of \$2,500, 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:** In a Settlement Agreement, while stating that he was not aware or did not know that his actions were in violation of KRS Chapter 11A, the employee agreed that the factual allegations as set forth in the Commission's Initiating Order, if proven true at a hearing, could result in a determination of a violation of KRS 11A.020(1)(a) and (b) as stated in the Commission's Initiating Order. The employee agreed to pay a civil fine in the amount of \$1,000, received a public reprimand, and waived any right to appeal.

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

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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:** In a Settlement Agreement, while stating that he was not aware or did not know that his actions were in violation of KRS Chapter 11A, the employee agreed that the factual allegations as set forth in the Commission's Initiating Order, if proven true at a hearing, could result in a determination of a violation of KRS 11A.020(1)(a), (b) and (d) as stated in the Commission's Initiating Order. The employee agreed to pay a civil fine in the amount of \$1,000, received a public reprimand, and waived any right to appeal.

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

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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:** In a Settlement Agreement, while stating that he was not aware or did not know that his actions were in violation of KRS Chapter 11A, the employee agreed that the factual allegations as set forth in the Commission’s Initiating Order, if proven true at a hearing, could result in a determination of multiple violations of KRS 11A.020(1)(a), (b) and (d) as stated in the Commission’s Initiating Order. The employee agreed to pay a civil fine in the amount of \$1,500, received a public reprimand, and waived any right to appeal.

### ***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:** In a Settlement Agreement, while stating that he was not aware or did not know that his actions were in violation of KRS Chapter 11A, the employee agreed that the factual allegations as set forth in the Commission's Initiating Order, if proven true at a hearing, could result in a determination of multiple violations of KRS 11A.020(1)(a), (b) and (d) as stated in the Commission's Initiating Order. The employee agreed to pay a civil fine in the amount of \$2,000, 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. 08-027***

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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:** In a Settlement Agreement, the former employee admitted to violating KRS 11A.050(3)(e) 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. 08-029***

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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:** 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. 09-001***

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**ALLEGATION:** That a former Mine Safety Analyst I in the Department of Natural Resources, Energy and Environment Cabinet, violated KRS 11A.020(1)(b), (c), and (d) by falsifying mine reports and failing to fulfill her job duties over a one year period while receiving compensation.

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

***Case No. 09-002***

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**ALLEGATION:** That a former employee of the Kentucky Transportation Cabinet, Department of Highways, District 10, 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 and others in derogation of the public interest at large by falsifying timesheets for the benefit of himself and others; utilizing his assigned Kentucky Transportation Cabinet cell phone to conduct personal business as well as Breathitt School Board Business; and utilizing a Kentucky Transportation Cabinet vehicle to conduct personal and Breathitt County School Board business.

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

***Case No. 09-003***

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

**CONCLUSION:** In a Settlement Agreement, the former employee admitted to violating KRS 11A.020(1)(d) as alleged, agreed to pay a civil fine in the amount of \$100, received a public reprimand, and waived any right to appeal. The parties agreed that there was insufficient evidence that the former employee violated KRS 11A.020(1)(c).

***Case No. 09-004***

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**ALLEGATION:** That a former employee of the Finance and Administration Cabinet failed to file a completed 2008 Statement of Financial Disclosure within the time period required by statute for the portion of calendar year 2008 during which she was employed, in violation of KRS 11A.050(1), (3)(f) and (l).

**CONCLUSION:** In a Settlement Agreement, the former employee admitted to violating KRS 11A.050(1), (3)(f) and (l) 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. 10-001***

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**ALLEGATION:** That an employee for the Department of Highways in the Transportation Cabinet violated KRS 11A.040(4) by enjoying a contract granted by his agency as a subcontractor to perform a portion of the contract; and further violated KRS 11A.040(3) by monitoring in his official position the workers of his private company in performance of services to fulfill a portion of a contract with his own agency.

**CONCLUSION:** In a Settlement Agreement, the employee admitted to violating KRS 11A.040(3) and KRS 11A.040(4), 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. 10-002***

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**ALLEGATION:** That a former Deputy Secretary for the Transportation Cabinet violated KRS 11A.040 (7) by: accepting employment, compensation, or other economic benefit from a company that does business with the state in a matter in which she was directly involved during the last thirty-six (36) months of her tenure.

**CONCLUSION:** In a Settlement Agreement, the former employee admitted to violating KRS 11A.040(7) 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. 10-003***

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**ALLEGATION:** That a conservation officer with the Department of Fish and Wildlife Resources: 1) Violated KRS 11A.020(1)(a) and (d) by using or attempting to use his influence and official position to obtain three sets of antlers (caribou, red stag, and fallow deer) from private citizens for the personal benefit of himself or his wife. His actions in this matter involved a substantial conflict between his personal or private interest in the antlers and his duties in the public interest relating thereto, and were in derogation of the public interest at large. 2) Violated KRS 11A.020(1)(a) and (d) by using his influence and official position to attempt to pressure a private citizen in regard to a 34 point deer rack the individual had found, first by trying to obtain the rack directly from the private citizen for himself, then by trying to convince the private citizen to take the rack to a specific taxidermist, a business regulated by the agency for which the employee worked. The employee's actions in this matter involved a substantial conflict between his personal or private interest in the rack and his duties in the public interest relating thereto, and his endorsement of the taxidermist in question was an attempt to secure or create an advantage for himself or that regulated business in derogation of the public interest at large.

**CONCLUSION:** In a Settlement Agreement, the then former employee admitted that he violated KRS 11A.020(1)(a) and (d), as alleged, agreed to pay a \$1,250 civil penalty, received a public reprimand, and waived any right to appeal.

***Case No. 10-004***

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**ALLEGATION:** That an employee of the Energy and Environment Cabinet, Division of Forestry, violated KRS 11A.020(1)(a), (c), and (d) by using his official position, state resources, and state time to give himself or others a financial gain; and to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large by using state time and resources in attempting to bid on a tree removal project at a state university during work hours while utilizing state equipment for financial gain.

**CONCLUSION:** In a Settlement Agreement, the employee admitted to violating KRS 11A.020(1)(a), (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. 10-005***

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**ALLEGATION:** That an employee, during her course of employment as a Nurse Administrator in the Department for Public Health, Cabinet for Health and Family Services, violated KRS 11A.045(1) by living rent free in a residence owned by a corporation regulated by the Office of Inspector General, Cabinet for Health and Family Services.

**CONCLUSION:** The Commission adopted a recommended order of default issued by the hearing officer, finding that the former employee violated KRS 11A.045(1) as charged, imposing a fine of \$1,500, and imposing a public reprimand.

***Case No. 10-006***

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**ALLEGATION:** That a former employee of the Office of Inspector General, Division of Health Care Facilities and Services, Cabinet for Health and Family Services, violated KRS 11A.045(1), which restricts a public servant from receiving anything over \$25 in value from a person or business regulated by his own agency, by living rent free in a residence owned by a corporation regulated by his agency. He obtained this financial gain for himself by using his official position to secure or create advantages for that corporation by means of providing inside agency information and instructions to an individual affiliated with the corporation. In doing so, the former employee violated KRS 11A.020(1)(c) and (d), which prohibits the use of one's official position to obtain financial or other advantages for oneself. The former employee also violated KRS 11A.040(1) by knowingly disclosing and using confidential information acquired

in the course of his official duties to further his own economic interest when he provided inside agency information and instructions and obtained favorable treatment with regard to administrative actions of the Cabinet for Health and Family Services for the individual affiliated with the corporation regulated by his agency.

**CONCLUSION:** This case is pending.

### ***Case No. 10-007***

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**ALLEGATION:** That a Transportation Engineer II for the Department of Highways, Transportation Cabinet, violated KRS 11A.020(1) by using his official position in an attempt to improperly influence the maintenance, repair, or replacement of a culvert which provides drainage to property in which he and his mother have a personal and financial interest; and that he violated KRS 11A.040(1) by providing confidential agency documents, either directly or through his mother, to a law firm to be used in litigation against the state. The employee obtained the documents through his official position.

**CONCLUSION:** This case is pending.

### ***Case No. 11-001***

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**ALLEGATION:** That a former employee of the Department of Highways, Transportation Cabinet, 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 means of misappropriating public funds. Specifically, the former employee used a state credit card to obtain fuel for non-state owned vehicles at a total cost of \$758.10, for which he received half of the cost of the fuel in cash from the operators of the vehicles.

**CONCLUSION:** This case is pending.

### ***Case No. 11-002***

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**ALLEGATION:** That an employee of the Public Protection Cabinet, Office of Legal Services, 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 earning money as an online legal expert while on state time; and by using his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest at large by using a state resources to benefit himself in derogation of the public interest at large.

**CONCLUSION:** In a Settlement Agreement, the employee admitted to violating KRS 11A.020(1)(c) and (d) as alleged, agreed to pay a \$2,000 civil penalty, received a public reprimand, and waived any right to appeal.

***Case No. 11-003***

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**ALLEGATION:** That a former employee of the Kentucky Department for Energy Development and Independence 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 by means of executing, for her personal benefit, three checks totaling \$2,250.00 on the account of the Governor's Conference on the Environment, a bank account entrusted to her in her official position. In cashing these checks for her personal gain, the former employee also violated KRS 11A.040(2) by knowingly receiving interest or profit arising from the use or loan of public funds in her hands.

**CONCLUSION:** This case is pending.

***Case No. 11-004***

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**ALLEGATION:** That the former Executive Director of the Kentucky Office of Highway Safety in the Department of Highways, Kentucky Transportation Cabinet: 1) Violated KRS 11A.020(1)(a) and (d) and KRS 11A.045(1) by using his influence in a matter involving a substantial conflict between his personal or private interest and his duties in the public interest; and using his official position to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest at large. Specifically, the former employee improperly used his official position to obtain pit passes and parking passes for himself and other individuals to three NASCAR races at Bristol Motor Speedway in 2010 by soliciting them through an official of the Kentucky Speedway, an entity doing business with the Kentucky Office of Highway Safety. 2) 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 causing his agency to pay for lodging for himself and others for a personal trip to attend a NASCAR race at Bristol, Tennessee. Specifically, on March 20, 2010, the night before the NASCAR race at Bristol, Tennessee, the former employee and three personal guests stayed in a two bedroom cottage at Pine Mountain State Park. The next morning, prior to traveling on to Bristol for the NASCAR race, the former employee did stop at the Cumberland Gap Tunnel Operations Center for a brief prearranged official visit. However, at the time he reserved the cottage at Pine Mountain State Resort Park, there was no apparent business purpose for the Kentucky Transportation Cabinet to pay for the lodging and, further, the former employee did not report any work time for March 20, 2010 through March 21, 2010.

**CONCLUSION:** In a Settlement Agreement, the former employee admitted to violating KRS 11A.020(1)(a), (c) and (d), and KRS 11A.045(1), as alleged, agreed to pay a \$4,000 civil penalty, received a public reprimand, and waived any right to appeal.

***Case No. 11-005***

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**ALLEGATION:** That an employee of the Division of Air Quality, Department for Environmental Protection, Energy and Environment Cabinet, violated KRS 11A.020(1)(c) and (d) by using his official position to obtain financial gain for himself and others and to secure or create privileges, exemptions, advantages, or treatment for himself in derogation of the public interest at large by the gross misuse of state equipment for his own personal interest and the interests of others. Specifically, the employee used his state vehicle to transport individuals who were not state government employees on multiple occasions during 2009 and 2010, and allowed an individual who was not a state government employee to use his state-issued cell phone on multiple occasions.

**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; Court of Appeals, Case No. 2009-CA-000991; and Supreme Court of Kentucky, Case No. 2010-SC-000321-D.**

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. On April 16, 2010, the Court of Appeals issued an unpublished Opinion affirming the Franklin Circuit Court's ruling. While Mr. Huffman sought discretionary review by the Supreme Court of Kentucky, his motion was denied by the Supreme Court on December 8, 2010. Mr. Huffman subsequently paid his \$2,500 civil penalty, bringing the matter to a close.

## COMMISSION-INITIATED ACTION

**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 was related to the Commission's merit system hiring investigation. Once all proceedings relating thereto were concluded, the Commission moved for dismissal of this action, which was granted by order of the Franklin Circuit Court on April 14, 2010.

**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 penalty in the amount of \$250 imposed by the Commission in an administrative proceeding. The Commission obtained a Default Judgment from the Franklin Circuit Court on September 16, 2009, directing that the Commission recover the \$250 civil penalty from Ms. Flowers, with 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 penalty in the amount of \$3,000 imposed by the Commission in an administrative proceeding. A Warning Order Attorney was appointed, and the Warning Order Attorney reported that Mr. Mills had filed bankruptcy. The Commission subsequently filed a proof of claim. The bankruptcy trustee filed a Final Report, based on which the Commission received \$989.50 of the \$3,000.00 civil penalty imposed in the administrative proceeding. The Franklin Circuit Court action was dismissed upon the Commission's motion.

**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. The underlying matter being resolved, this issue became moot and the matter was dismissed by the Franklin Circuit Court upon the Commission's motion.

**Executive Branch Ethics Commission v. Tara Gaines, Franklin Circuit Court, Div. II, Civil Action No. 09-CI-2148**

The Commission filed this enforcement action against Ms. Gaines to collect the remainder of a \$250 civil penalty which Ms. Gaines had agreed to pay as part of a Settlement Agreement entered into with the Commission to resolve an administrative proceeding. Ms. Gaines made one payment of \$25 then ceased to make payments. After this action was filed, Ms. Gaines paid the remaining balance and the matter was dismissed by the Franklin Circuit Court upon the Commission's motion.

**Executive Branch Ethics Commission v. Sharon Harris, Franklin Circuit Court, Div. I, Civil Action No. 11-CI-0054**

The Commission filed this enforcement action against Ms. Harris to collect a civil penalty in the amount of \$1,500 imposed by the Commission in an administrative proceeding. After this action was filed, the Commission was able to resolve the matter with Ms. Harris and obtained payment of her civil penalty. As a result, the Commission filed a notice of voluntary dismissal of this matter.

**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. Once all proceedings relating to the Commission's merit system hiring investigation were concluded, the Commission removed itself from this 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 asserted that Commonwealth's Attorneys are not subject to KRS Chapter 11A. The Pike Circuit Court issued an Opinion and Order on July 16, 2009, agreeing with Mr. Bartley's assertion.

**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. However, the parties subsequently resolved the underlying administrative proceeding by means of a settlement agreement, and as a result Mr. Adams moved to dismiss his appeal. His motion was granted by the Court of Appeals on October 22, 2009.

**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. The Franklin Circuit Court issued an Opinion and Order on November 3, 2009, dismissing Mr. Murgatroyd's Petition for Declaratory Judgment and remanding the case to the Commission for further proceedings. Shortly thereafter, Mr. Murgatroyd entered into a settlement agreement with the Commission in the underlying proceeding.

**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, which issued a published Opinion on November 20, 2009, affirming the order of the Boyle Circuit Court. Because the allegations brought by the Commission against Mr. Turbyfill concerned only civil matters, the pardon did not apply and Mr. Turbyfill remained subject to the Commission's jurisdiction. Shortly thereafter, Mr. Turbyfill entered into a settlement agreement with the Commission in the underlying proceeding.

**Betty Atkinson, et al. v. Executive Branch Ethics Commission, Franklin Circuit Court, Division I, Civil Action No. 08-CI-1798; Court of Appeals, Case No. 2009-CA-00; and Supreme Court of Kentucky, Case No. 2010-SC-000649-D**

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. On June 18, 2010, the Court of Appeals issued a

published Opinion reversing the opinion and order of the Franklin Circuit Court and remanding the case with directions for the trial court to dismiss the case and lift its order holding the administrative proceedings in abeyance so that the PVAs could exhaust their administrative remedies. In reaching this conclusion, the Court of Appeals determined that the PVAs were “major management personnel in the executive branch of state government.” While the PVAs sought discretionary review, the Supreme Court of Kentucky denied their motion on June 11, 2011.

# 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/>.

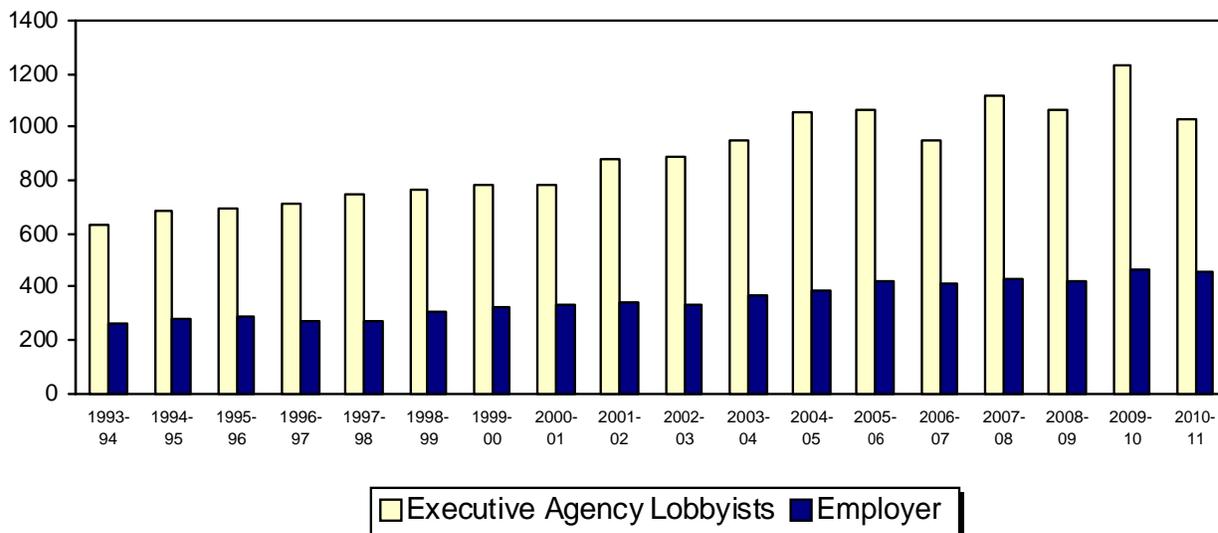
Lobbyists are required to identify on their registration statements the type of industry that they represent. The table below shows the type of industries represented as of June 30, 2010 and 2011.

<b>TYPE OF INDUSTRY</b>	<b>2009-2010</b>		<b>2010-2011</b>	
	<b>NUMBER OF LOBBYISTS</b>	<b>NUMBER OF EMPLOYERS</b>	<b>NUMBER OF LOBBYISTS</b>	<b>NUMBER OF EMPLOYERS</b>
Advocacy/ Non-Profit/Social Services	22	15	27	18
Agriculture/Equine/Tobacco	25	12	19	12
Architects/Construction/Engineers	187	62	185	59
Arts/Tourism	15	4	5	4
Computer Hardware/Data/Technology	127	51	99	39
Communications/Telecom	36	11	18	9
Criminal Justice/Corrections/Public Safety	30	14	32	12
Education/Workforce Training	61	18	52	19
Entertainment/Gaming /Hospitality	47	21	34	25
Environmental Services/Energy Efficiency	49	14	47	14
Financial Services/Investments/Insurance	176	67	155	69
Health Care/Hospital/Pharmaceuticals/ Bio Tech	232	89	196	94
Legal/Law Firm/Consulting	18	8	11	7
Local Government/Economic Development	64	23	55	21
Manufacturing/Retail	23	13	24	10
Media/Public Relations	24	10	16	9
Minerals/Petroleum/Utilities/Energy	57	21	27	19
Transportation	44	17	25	14
<b>TOTAL</b>	<b>1237</b>	<b>470</b>	<b>1027</b>	<b>455</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, 2010, 1237 executive agency lobbyists representing 470 employers were registered with the Commission; on June 30, 2011, 1027 executive agency lobbyists representing 455 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 years 2009-10 and 2010-11, the Commission levied and collected the maximum fine of \$1,000 from one employer, G4s Youth Services, for failure to file the Updated Registration Statement, Employer, and \$1,000 from one executive agency lobbyist, Todd Wolfe, for failure to file the Updated Registration Statement, Lobbyist.

In the previous biennium (July 1 2007 through June 30, 2009) an employer, The Jockey's Guild filed for bankruptcy after a fine order of \$1000 was issued for its failure to file the Updated Registration Statement and pay the \$125 registration fee for the July 2008 reporting period. The Jockey's Guild filed the Updated Registration, 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 was filed with the bankruptcy court. Proof of claim resulted in a total payment of \$209.46, paid in three installments, for the fine.

## **LEGISLATIVE HISTORY**

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, and the Commission will continue to strive to improve the code by means of pursuing positive legislative action.

# 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**

**EXECUTIVE BRANCH ETHICS COMMISSION**

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