

COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION



**GUIDE TO THE
EXECUTIVE BRANCH
CODE OF ETHICS**

For All Executive Branch Public Servants,
Including Merit and Non-Merit Employees

**June 2016
9th Edition**

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This Guide provides general information only. The statements contained in it do not have the force and effect of law. Amendments to the ethics laws, regulations, and advisory opinions may modify or supersede any or all statements in this Guide.

For more information, employees should contact the Executive Branch Ethics Commission or refer to the current edition of the **Kentucky Revised Statutes, Chapter 11A**, and **Kentucky Administrative Regulations, Title 9** (provided online at <http://ethics.ky.gov>).

Anyone wishing for further guidance may request an advisory opinion by submitting a written request at least two weeks before the next scheduled Commission meeting or may contact the Commission's staff by phone at any time.

**You may reproduce this Guide in whole
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INTRODUCTION

This Guide contains references to and explains the ethics laws contained in Kentucky Revised Statutes (KRS) Chapter 11A, referred to as the Ethics Code. All state officers and employees in the executive branch of state government are subject to the Ethics Code. The Ethics Code refers to these employees as “Public Servants.”

WHO IS A PUBLIC SERVANT?

YOU ARE! EVERY EMPLOYEE OF EVERY EXECUTIVE BRANCH AGENCY IS A PUBLIC SERVANT COVERED BY THE ETHICS CODE. YOU ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH THESE LAWS.

Some of the provisions of the Ethics Code *only* apply to officers.

WHO IS AN OFFICER?

An officer is defined as major management personnel, including cabinet secretaries and commissioners, deputy secretaries and deputy commissioners, executive directors, general counsels, division directors, anyone holding a personal services contract to perform the duties of any of these officers, and constitutional officers.

The members of the following Boards are also considered officers:

The Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems Board of Trustees, Kentucky Teachers’ Retirement System Board of Trustees, Public Service Commission, Worker’s Compensation Board and its administrative law judges, the Kentucky Occupational Safety and Health Review Commission, the Kentucky Board of Education and the Council on Postsecondary Education.

Source: KRS 11A.010(7) and (9)

The citizens of the Commonwealth have a right to expect honesty from public servants and have confidence in their government. The Ethics Code sets minimum standards of ethical behavior for public servants. However, as public servants, our goal should be to provide the public with the highest ethical standards of public service. Each one of us must exercise good judgment and common sense, as well as behave ethically.

This publication does not replace the actual law, nor does it explain all of the ethical requirements of the Ethics Code or the statutes to which you are subject. Additionally, the laws contained in KRS Chapter 11A may not provide guidance for all situations that you may encounter. If you have questions concerning a matter that is unclear or is not addressed in this Guide, you may contact the staff of the Executive Branch Ethics Commission at (502) 564-7954 for guidance, or review the Commission's website at: <http://ethics.ky.gov/>.

EXECUTIVE BRANCH AGENCIES

Executive branch agencies are those state agencies which are headed directly or indirectly by the Governor or another statewide elected official to carry out the laws of the Commonwealth. Executive branch agencies include state offices, cabinets, departments, boards, commissions, public corporations and authorities. Thus, employees of such agencies are considered executive branch employees and must follow the Ethics Code.

Employees of an executive branch agency that is directed by statute to adopt a code of ethics, and has through statute or regulation adopted its own ethics code, are exempt from the Executive Branch Code of Ethics.

Each executive branch agency may implement its own, more restrictive guidelines to be followed by its employees to supplement the Ethics Code. Therefore, please be sure to review

the state employee handbook as well as your agency's own policies in addition to reviewing this guide.

Source: KRS 11A.010(7), KRS 11A.015, and Advisory Opinion 95-4

EXECUTIVE BRANCH ETHICS COMMISSION

The Executive Branch Ethics Commission is composed of five members appointed by the Governor to serve staggered terms of four years. The Commission is responsible for providing guidance, issuing advisory opinions, and investigating potential violations of KRS Chapter 11A.

The Commission meets bimonthly to discuss advisory opinions and other matters. Meetings are open to the public. Please contact the Commission office or view our website, www.ethics.ky.gov, for specific meeting dates. Investigatory matters are discussed in executive sessions which by law are not open to the public.

The Commission seeks to fulfill its mission through:

- Administering a program of training and education on the Ethics Code;
- Providing guidance to executive branch employees concerning their ethical conduct;
- Enforcing the provisions of the Ethics Code;
- Interpreting the Ethics Code through the issuance of advisory opinions;
- Registering executive agency lobbyists; and
- Recommending legislation to the General Assembly.

The office of the Commission reviews and houses records for public inspection, including:

- Statements of Financial Disclosure;
- Executive Agency Lobbyist Registration Statements;
- Gift disclosure statements; and
- Records relating to administrative proceedings.

You are encouraged to seek guidance from the Commission staff if you have questions concerning ethical matters which are not answered in this Guide. The Commission staff will provide you with guidance or refer your request to the Commission for an advisory opinion.

Source: KRS 11A.060 and KRS 11A.110

GENERAL STANDARDS OF CONDUCT

It is the public policy of the Commonwealth that a public servant work for the benefit of the people of the Commonwealth. The Executive Branch Code of Ethics recognizes that public office is a public trust where government is based upon the consent of its citizens. Those citizens are entitled to have complete confidence in the integrity of their government. Thus, the following provisions provide general statements of required behavior of executive branch employees.

- 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 which has the potential to become a conflict of interest with their state employment.

Source: KRS 11A.005

CONFLICTS OF INTEREST

YOU, AS A PUBLIC SERVANT, MUST . . .

- ✓ Avoid all conduct which might in any way lead members of the general public to conclude that you are using your official position to further your professional or private interest when appearing before a state agency; AND
- ✓ Disclose in writing to your superior the fact that you have abstained from action on an official decision in which you have or may have a personal or private interest.

Your superior shall then cause the decision on these matters to be made by an impartial third party.

Source: KRS 11A.020(2)-(4)

WHEN SHOULD YOU ABSTAIN FROM A DECISION?

If you think you should abstain from action on an official decision, ask yourself these questions:

- ✓ Has your personal or private interest created a substantial threat to your independence of judgment?
- ✓ Will your participation have an effect on public confidence in the integrity of the executive branch?
- ✓ Is your participation likely to have any significant effect on the disposition of the matter?
- ✓ Will the official decision affect you in a manner differently from the public?

If you answered yes to any of these questions, you should abstain.

- ✓ Is there a need for your particular contribution, such as special knowledge of the subject matter, for the executive branch to function effectively?

If you answered yes to this question, you may be able to avoid abstaining.

Source: KRS 11A.020(1)(a), KRS 11A.020(3), and KRS 11A.030

WHEN IN DOUBT . . . ASK BEFORE YOU ACT!

When you don't know whether you should abstain from an official action, make an inquiry to the staff of the Executive Branch Ethics Commission. We can provide guidance verbally over the phone or in writing. We can also guide you to already established advisory opinions or assist you in the process of getting a formal advisory opinion from the Commission. *It is better to be safe than sorry.*

<p><i>Examples</i></p>

In your state employment, you become aware of confidential bond information which you could use to help your personal investments. You may not use the information obtained for your own personal advantage.

You are employed as an auditor for the state agency responsible for auditing county governments. As such, you are involved in the annual audit of various counties, including the one in which you live. You have been asked to serve on an "ethics board" for the county in which you live. You will be paid a certain amount per diem for your services. You may not serve on a board and receive compensation from the county which is regulated by the agency for which you work.

Field representatives for the Office of the Governor should not send employment recommendations to state agencies based strictly on the applicant's political involvement with no direct knowledge of the applicant's qualifications or capabilities.

Your spouse owns a business that is inspected and/or regulated by the division for which you work. You must NOT inspect your spouse's business or any business in competition with your spouse. In addition, you should not work in the same division as persons inspecting your spouse's business.

The wife of the Executive Director of the Kentucky Horse Racing Commission, which provides licenses to horse trainers in Kentucky, cannot hold a KHRC license as a trainer and train horses in KY under the jurisdiction of KHRC.

An employee or agency may not accept travel expense reimbursement from the self-described "philanthropic arm" of an agency which they do business with.

The Deputy Secretary of the Justice and Public Safety Cabinet cannot call subordinate employees and attempt to solicit campaign contributions from them, based on their salary, for the Governor's re-election campaign.

An employee of the Department of Fish and Wildlife Resources cannot use his official position as a conservation and law enforcement officer to falsely claim he was involved in an undercover investigation to gain entry into a bar for his 15 year old daughter and order drinks for her.

Advisory Opinions: 93-12, 93-18, 93-26, 93-37, 94-15, 03-8, 12-02, 12-03, 12-04

Administrative Proceedings: 11-012 and 12-009

PROHIBITED CONDUCT: USING INFLUENCE & ABUSING OFFICIAL POSITION

If you violate the following provisions, you could be subject to civil penalties, which are detailed at the end of this Guide.

YOU, AS A PUBLIC SERVANT, SHALL NOT . . .

- Ø Use or attempt to use your influence in any matter which involves a substantial conflict between your personal or private interest and your duties in the public interest;
- Ø Use or attempt to use any means to influence a public agency in derogation of the state at large;
- Ø Use your official position or office to obtain financial gain for yourself or any members of your family; **OR**
- Ø Use or attempt to use your official position to secure or create privileges, exemptions, advantages, or treatment for yourself or others in derogation of the public interest at large.

Source: KRS 11A.020(1)(a)-(d)

9 KAR 1:025 provides examples in which a public servant could be considered in violation of the statute above:

- A public servant participates directly or uses his or her position to influence a decision within his or her agency concerning any matter involving the public servant's family member or a person with which the public servant has a close, personal relationship.
- A public servant uses state time, equipment, personnel, facilities, or other state resources for (1) private, for-profit, business purposes, (2) political campaign purposes, or (3) sexual interests.
- A public servant solicits, sells to, or otherwise engages in a financial transaction with an immediate subordinate, a person the employee directly supervises, or a person or business that is doing business with or is regulated by his or her state agency, **IF** the economic benefit to the public servant is greater than \$100 in a single calendar year.

ENDORSEMENTS

State agencies and employees, acting as representatives of their respective agencies, should take great care not to appear that they are endorsing or promoting a specific product or company. State agencies should not actively endorse or promote a company when no corresponding public benefit to the citizens of the Commonwealth, or to the state's economic development, will occur. Any information a public servant supplies concerning a vendor of his or her agency should be limited to the facts of the performance of services or the receipt of a product, but should not be an active endorsement of that service or product.

Public and private partnerships may be allowed when the purpose of partnering is to promote a state program that will benefit the entire Commonwealth or will promote economic development or tourism in the state. Such partnering should be open to any company interested in partnering.

Source: KRS 11A.020(1)(d)

Examples

The Attorney General may provide a statement reflecting his views in an educational book on consumer scams related to the mission of the Office of the Attorney General, provided the statement does not appear to be promoting the sale of the book.

The Kentucky State Police may not allow Ford Motor Company to use the state police insignia on a sport utility vehicle ("SUV") display model for use in promoting the use of SUVs by law enforcement agencies.

Materials distributed by private companies which are merely brochures advertising a state program and do not identify the

private company, other than to state "printed by" and the company's name, are permitted.

An Agriculture Marketing Supervisor over the Department of Agriculture's Organic Program may not use his state email and Department letterhead to endorse a private company to provide organic certification inspections to out-of-state organic product producers after the Department decides to no longer offer such services.

Advisory Opinions: 00-18, 00-24, and 02-21

*Administrative Proceedings: 12-006**

PREFERENTIAL TREATMENT OF FAMILY MEMBERS

A family member of a public servant is not prohibited from employment in the same state agency as the public servant. However, a public servant may not advocate or influence in any way the employment, appointment, promotion, transfer, or advancement of a member of the public servant's family to an executive branch position of employment that the public servant directly supervises or manages. Any public servant who uses their position to ensure that a family member receives a job, a promotion, a pay raise, or any form of preferential treatment could be in violation of the Ethics Code.

"Family" includes: spouse, children, parents, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. See *KRS 11A.010(4)*.

Specifically, employees may not interview, recommend, or approve family members for positions within their employing agencies. They should not directly supervise a family member, evaluate a family member's job performance, or participate in an action relating to the discipline of a member of the public servant's

family. A public servant who participates in such conduct has an obvious and perceived conflict of interest and should abstain from any such activities.

Source: KRS 11A.020(1)(a), (b), and (d), KRS 11A.020(3), KRS 11A.030, and 9 KAR 1:025

<i>Examples</i>

The Treasurer may not hire her son for summer employment in the Office of the State Treasurer.

A PVA may not hire her daughter to work for her and ultimately promote her to Chief Deputy.

Your brother-in-law seeks employment with the Transportation Cabinet. As chief of staff for the Office of the Governor, you should not recommend to Transportation cabinet officials that he be employed.

You are a manager of a state park and should not supervise or evaluate other park employees who are your family members.

Advisory Opinions: 04-34 and 07-19

Administrative Proceedings: 08-022

ABUSE OF STATE TIME AND RESOURCES

Public servants are prohibited from misusing state time as well as resources they are provided through their employment, such as vehicles, office space, office equipment, cell phones, and email addresses. Oftentimes, this abuse happens in a minor capacity, but other times employees are found to have grossly overused their state provided resources and work time to conduct personal and private business for profit. Public confidence in the Executive Branch is destroyed when these abuses come to light. All public servants must be mindful not to abuse state resources in their everyday activities.

Public servants who actively participate in such conduct are using their official positions for potential private gain and should discontinue such activities.

Source: KRS 11A.020(c) and (d)

Examples

An officer traveling to an approved out-of-state conference should not book a more expensive flight in order to travel to an additional location to combine business with pleasure.

An inspector should not falsify reports and timesheets to reflect that he has performed inspections that he has not actually performed.

An public servant should not use her state-issued email address, cell phone, office space, and sick leave to run a private business on state time, even if she is getting her state work completed on time.

A Staff Attorney with the Kentucky Transportation Cabinet cannot claim regular working hours on their timesheet when they arrive

between nineteen minutes and five hours late on 54 work days, resulting in the employee being paid for twenty-one hours of time he was not at work or performing work related activities.

The Commissioner of the Department of Fish and Wildlife Resources cannot use his position to have Department employees perform personal work for him on state time using state equipment. This includes: pumping out the flooded basement of his personal residence; picking up building materials for his personal use; repairing a dent in his personal canoe; cutting pieces of countertop for his personal residence; and performing an inspection on a home he was looking to purchase. He also cannot use the Department's FedEx account to have personal items shipped for his personal use, including having the skin of an alligator he killed in Florida delivered to a taxidermist in Georgia.

Administrative Proceedings: 03-103, 09-001, 9-002, 9-003, 10-004, 11-002, 11-005, 11-008, 12-004, 12-005, 14-003, and 15-007

**PROHIBITED CONDUCT:
DISCLOSING INFORMATION &
SELF-DEALING**

If you violate the following provisions, you could be subject to civil penalties AND potential criminal penalties, including prosecution for a Class D Felony, which can carry a 1 to 5 year sentence.

AS A PUBLIC SERVANT, YOU SHALL NOT KNOWINGLY . . .

- Ø Disclose or use confidential information acquired in the course of your official duties, when such would further your own economic interests.
- Ø Receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in your hands or to be raised through any state agency.
- Ø Act as a representative or agent for the Commonwealth or any agency in the transaction of any business or regulatory action with yourself, or any business in which you or a member of your family has any interest greater than 5% of the total value thereof.
- Ø Hold, bid on, negotiate or enjoy, in whole or in part, any contract, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which you are employed.
- Ø Accept compensation, other than that provided by law for public servants, for performance of your official duties without the prior approval of the Commission.

Source: KRS 11A.040(1)-(5)

STOCK OWNERSHIP

An employee, his spouse and his dependent children should not own an interest with a value of five percent or more of an entity that does business with the state agency for which the employee works, unless the stock or other interest is purchased exclusively through participation in a publicly traded mutual fund where the purchasing and selling decisions are completely out of the control of the employee or spouse

Additionally, an employee, his spouse and his dependent children should not own an interest with a value of five percent or more of an entity that is regulated by the state agency for which the employee works, unless:

- 1) The stock or other interest is purchased exclusively through participation in a publicly traded mutual fund where the purchasing and selling decisions are completely out of the control of the employee or spouse; or
- 2) In his state employment, neither the employee nor anyone under his supervision is directly involved in any matters concerning the company or other entity of which he owns an interest.

Source: KRS 11A.040(4)

Examples

The spouse of the director of the division responsible for telecommunications owns an interest of more than five percent in a communications company that does business with the division for which the director works. The director's spouse may retain an interest in the company up to a value of five percent, but must

divest any interest he or she has in the company which is over five percent.

An employee of the department responsible for state computer systems owns \$20,000, but less than five percent, of stock in a computer company that sells products to the employee's department. As a part of his official duty, the employee is not directly involved in any matters concerning the company of which he owns an interest. He is not required to divest himself of any of his stock.

Advisory Opinion: 00-20

Administrative Proceeding: 08-008

REPRESENTATION OF THE COMMONWEALTH

An employee must not knowingly act as a representative of the state in the transaction of any business or regulatory matters with any business of which the employee or a member of his family owns more than five percent.

Source: KRS 11A.040(3), KRS 11A.010(4)

Examples

An agriculture inspector owns an egg business that he leases to a non-family member. As part of his state employment, the inspector inspects businesses that purchase eggs from his leased egg business. The inspector, a representative of the state, is prohibited from inspecting businesses that purchase eggs from his leased egg business.

Your husband owns a business that is inspected and regulated by the division for which you work. You must not inspect your spouse's business or any business that is in competition with your spouse's business. In addition, you should not work in the same division as inspectors of your spouse's business.

A Family Services Office Supervisor with the Cabinet for Health and Family Services cannot use her position to represent the Cabinet in negotiations to have a business owned by her husband provide promotional products for events held by the Department.

Advisory Opinions 93-26 and 94-15

Administrative Proceeding: 14-019

CONTRACTS OR AGREEMENTS WITH THE COMMONWEALTH

An employee, spouse, or business of which an employee or spouse owns at least five percent, must not knowingly have any agreement or contract with the state agency for which the employee works. This includes contracts that are awarded through a competitive bid process and also grants that are awarded by state agencies.

This provision does not apply to agreements made pursuant to eminent domain, those involving funds disbursed through entitlement funds, sales of craft items to a state park by interim state employees designated as craft persons, or purchases from a state agency that are available on the same terms to the general public or that are made available at public auction.

In addition, all contracts and agreements between an employee and a state agency must comply with the Model Procurement Code in KRS Chapter 45A.

Source: KRS 11A.040(4)

Examples

You own a computer products company and wish to sell your products to the state agency for which you work. You are prohibited from selling any products to your state agency.

Your spouse owns and operates a catering business and wishes to cater a Christmas party for a state agency for which you do not work. Your spouse is not prohibited from providing the catering services, provided he or she is in compliance with the Model Procurement Code.

You are employed by the Department of Corrections as a dentist. You may not provide services for a private professional service corporation

that will fulfill a service the professional service corporation provides for your agency.

A potential candidate for Governor, or any company of which he owns or controls a five percent interest, if elected, may not contract with or enjoy a part of a contract with an executive branch agency.

A Transportation Engineer Supervisor cannot conduct surveying activities for a company owned by his spouse on a project for the Transportation Cabinet. This would result in the employee benefiting from the contract between his spouse's company and the Cabinet.

A Director with the Cabinet for Health and Family Services cannot use her position to have her agency do business with a company owned by her husband, to provide catering for an event held by her Department. The Director may not use staff to create documentation to show that her husband's company was the lowest bidder, and she may not then use this documentation to represent to upper management that her husband's company is the only option to provide catering.

Advisory Opinion 93-15, 96-38, 05-42, and 06-26

Administrative Proceeding: 10-001, 14-001, and 14-008

HONORARIA

Without the approval of the Commission, an employee must not knowingly accept compensation, other than state salary, for performance of his official duty. An employee is permitted to accept compensation for providing a service which is not a part of the official duty directed by his supervisor. Such service must be performed on the employee's own time and without the use of state resources.

Source: KRS 11A.040(5)

Examples

The branch manager for the traffic safety division is asked to give a speech on hybrid tea roses to a garden club at night. The manager may accept the \$50 honorarium given by the garden club because the speech is not a part of the employee's official duty and is given on the employee's own time.

The secretary of a cabinet is asked to give a commencement address at a state university. Part of the secretary's official duties involves speaking at commencement ceremonies. Thus, without the approval of the Commission, the secretary may not accept the honorarium.

You are required to perform jury duty for a month. You may accept the compensation for jury duty service in addition to your state salary since jury duty is not part of your official employment duty.

A Cabinet Secretary should not accept honoraria for the performance of his official duty, even if such honoraria will be donated to the Commonwealth.

Advisory Opinions 93-31, 94-14, 96-33, and 04-41

GIFTS AND GRATUITIES

An executive branch employee, spouse or dependent child shall not knowingly accept gifts or gratuities totaling a value greater than \$25 in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the state agency for which the employee works, or from any group or association which has as its primary purpose the representation of such persons or businesses. Acceptance of such gifts may appear to be a conflict of interest and may damage public confidence. Moreover, their acceptance violates the Ethics Code!

Gifts **ARE**:

- Ø Payments
- Ø Loans
- Ø Subscriptions
- Ø Advances
- Ø Travel Expenses
- Ø Deposits of money
- Ø Meals
- Ø Services
- Ø Anything of value, unless consideration of equal or greater value is received

Gifts **ARE NOT**:

- ✓ From family members in their capacity as family members;
- ✓ From campaign contributors, so long as the donation complies with the Campaign Finance laws;
- ✓ Door prizes available to the public;
- ✓ Tickets for admission to sporting events **if** you pay face value for such tickets or admission; or

- ✓ A gift or gratuity received by an employee working directly on an economic incentive package or seeking to bring tourism to the state which was not solicited by the employee and was accepted in performance of the employee's official duty. Such gifts must be registered with the Commission and, if of a tangible value of more than \$25, must be turned over to the appropriate agency.

What if I receive a gift that I should not accept according to the rules? You should, when practicable:

- Return the gift to the gift-giver, or
- Pay the gift-giver the market value of the gift.

When these options are not practicable, you should:

- Donate the gift to charity, or
- Destroy the gift.

Disposal should be documented in writing to your appointing authority and shall be included in your personnel file.

The Commission may authorize other exceptions where an appearance of impropriety will not be created. Such requests for exceptions must be submitted to the Commission in writing two weeks before its next scheduled meeting to be considered.

Additionally, all gifts from a single source received by an elected official or officer as defined in KRS 11A.010(7) which exceed \$200 in value must be disclosed on the employee's Statement of Financial Disclosure filed annually with the Commission.

Source: KRS 11A.045, KRS 11A.050(3)(k)

Examples

A cabinet secretary cannot accept reimbursement for the costs of attending a program sponsored by a national association that represented entities regulated by the cabinet because the reimbursement for travel expenses in excess of \$25 in a calendar year may not be accepted from a business regulated by the Cabinet or from any group or association which has as its primary purpose the representation of those businesses.

An employee inspects a business for safety violations. He may not accept a \$30 gift certificate from the business.

The father of an employee of the Transportation Cabinet works for a consulting firm that seeks to do business with the state. The employee may accept a gift from his father as long as his father is not acting for the consulting firm in the giving of the gift.

A Christmas gift valued at \$50 is sent from a potential vendor to the “state office”. The gift should be returned to the potential vendor, if possible. Otherwise, the gift should be donated to charity and the gift’s disposition should be documented.

A cabinet secretary receives a painting with a \$300 value from an old college friend who has no business or regulatory relationship with the state. The secretary may accept the painting, but must report the gift on his Statement of Financial Disclosure filed with the Commission.

As part of his official duty to promote economic development, an employee is involved with the expansion of a major automobile manufacturer within the state. Officials of that company provide the employee with a gift which has a \$50 value. The employee may accept the gift, but it must be registered with the Commission and turned over to the proper agency.

A Director of the Division of Highway Safety Programs with the Transportation Cabinet cannot use his official position to gain access for himself and family members to the Kentucky Motor Speedway in order to meet a well-known singer and actress. The Director's receipt of access to a suite overlooking the race and private access to the celebrity violates the Gifts rule because no money was paid for these items and no value can be assessed because the access includes areas that are not available to the general public.

The Agriculture Commissioner cannot use his position to receive gifts purchased with state money including firearms, carry cases, knives, cigar boxes, food, candy, and alcohol to give to his friends and family members. He also cannot accept gifts in the form of an all-terrain vehicle in exchange for a grant from his agency.

An employee with the Department of Parks who is the business manager at a State Resort Park cannot use his position to access a pontoon and ski boat owned by the State Dock for his family's personal use without paying a rental fee. Rental fees for the pontoon boat range from \$119 to \$ 299 and rental fees for the ski boat range from \$329 to \$529.

Advisory Opinion 94-19, 00-61, 04-42, 05-38, 08-5, and 12-04

Administrative Proceedings: 10-006, 11-009, 11-010, 12-002, 13-001

SOLICITATION & ENDORSEMENT

An executive branch employee (or agency) should not solicit money, goods, or services, or accept donations, from persons or businesses that do business with or are regulated by the agency for which the employee works, unless the solicitation is to raise funds for a charitable, nonprofit organization. In addition, an employee should not accept donations from a person or business if that person or business is seeking to do business with the agency for which the employee works, unless the donation is to raise funds for a charitable, nonprofit organization. The appearance of a conflict of interest prohibits an employee or agency from soliciting or accepting such donations.

However, an executive branch agency is not prohibited from soliciting corporate donations for state-sponsored programs, provided the entities solicited have no business or regulatory relationship with the agency and provided the entities are not lobbying or seeking to influence matters of the agency. An agency can enter into an agreement with a not-for-profit private entity in a program that would benefit the entire Commonwealth, or would promote economic development or tourism in the state. An agency may not, however, “endorse” a private company by publicly and actively promoting one private company over another, regardless of any benefit it might have to the state.

Source: KRS 11A.055

Examples

A local supermarket offers a donation of ground meat for a chili lunch to benefit the Kentucky Employees Charitable Campaign. Occasionally, someone who works for the agency for which you work makes purchases on behalf of that agency at the supermarket.

You may accept the donation of meat from the supermarket because it is for a charitable nonprofit organization.

An employee of an agency that regulates utility companies, but who works within a separate division from the division that has direct regulatory control over the utility companies, wants to solicit donations from utility companies for a worthwhile environmental educational project. The employee is prohibited from soliciting donations from the utility companies.

An employee works for the agency which regulates some aspects of the work of architects on building projects his agency must review for approval. The employee is involved, privately, in a local Habitat for Humanity project on which a local architect has offered his services. The local Habitat for Humanity organization may solicit and accept the services of the architect.

Your agency is involved in planning its 40th anniversary celebration. You may not solicit vendors of your agency to contribute to such an event.

The national professional association for employees of your agency plans to host its annual meeting in Kentucky. Employees of your agency will be involved in the planning and conducting of the conference. Vendors of your agency wish to donate funds to sponsor a golf tournament. Employees of your agency should not solicit sponsors for the golf tournament who are vendors or are seeking to do business with your agency. However, the national professional association may seek such sponsors provided such solicitation does not involve employees of your agency.

The Agriculture Commissioner cannot use his position to solicit donations for a conference to be held in Kentucky from organizations which the Department of Agriculture regulates or has a business relationship with or from organizations who represent groups that the Department regulates.

Advisory Opinions 93-45, 00-15, 02-20, 09-02, 09-30, 10-02, and 13-001

OUTSIDE EMPLOYMENT

An employee is prohibited from accepting outside employment from any person or business that does business with or is regulated by the state agency for which the employee works unless the outside employment is approved by the employee's appointing authority. To obtain approval for such outside employment, an employee must submit a statement to his appointing authority affirming that in his state employment he is not involved in any decisions concerning the outside employer for whom he wishes to work. The appointing authority may not approve the outside employment if the employee is involved in any matters concerning the outside employer for whom he wishes to work.

The Ethics Code does not prohibit an employee from accepting outside employment with a state college or university as long as such employment does not interfere with or is not in conflict with the employee's state employment duties.

It is important to note that agencies may establish more stringent outside employment policies than prescribed by the Ethics Code, and in fact many agencies have such policies in place. Before undertaking any sort of outside work for which you will receive compensation, the Commission strongly encourages you to consult with your own agency regarding the matter.

Source: KRS 11A.040(10), KRS 11A.120, and 9 KAR 1:050

Examples

You work as a youth social worker for the state. In addition, you would like to obtain outside employment with a nursing home that is regulated by the agency for which you work. You are not involved in any decisions concerning nursing homes in your state employment. You may accept outside employment with the nursing home if you submit a request and obtain the approval of your appointing authority.

You work as a nurse for a state-administered hospital. In addition, you sell beauty products for a company which is not regulated by, nor does business with, the state agency for which you work. You may continue your outside employment because there is no business or regulatory relationship between the state agency for which you work and the beauty product company. No approval is needed from your appointing authority unless it is required by an in-house policy.

You work as a state inspector of pharmacies. You wish to obtain weekend employment at a local pharmacy which you inspect. You are involved in your state employment in decisions concerning the outside employer for whom you wish to work. Thus, you are prohibited from such outside employment.

You are a beekeeper for the state. You may teach a class on beekeeping on the side if teaching classes on beekeeping is not part of your regular job duties and you avoid any conflicts of interest.

An environmental scientist with the Division of Oil and Gas in the Energy and Environment Cabinet cannot hold outside employment with a research company when some of the company's research involves a process for treating waste products which the environmental scientist regulates.

Advisory Opinions: 09-03, 09-24, 10-04, 12-03, and 15-04

Administrative Proceedings: 07-113

POST-EMPLOYMENT RESTRICTIONS

Prior to leaving state employment, you should not engage in activity in which you are using your state position to secure future employment.

- Ø A public servant shall not seek personal employment or contracting services by the use of the public servant's office or position **EXCEPT** the public servant may state the fact that he or she holds a particular position or office in an application for employment, a resume, or curriculum vitae.

- Ø A public servant shall not negotiate for future employment with a person or business that does business with or is regulated by his or her agency if the public servant is directly involved in matters regarding the prospective employer **UNLESS** the public servant abstains from direct involvement in matters regarding the prospective employer and the public servant discloses the abstention in writing to his or her appointing authority **BEFORE** entering into any form of negotiations for future employment.

Source: 9 KAR 1:025

The following restrictions on post-employment apply regardless of whether you are terminated from your position or voluntarily leave.

FOR ALL PUBLIC SERVANTS

- Ø You may not act as a lobbyist, or lobbyist's principal, or represent a person or business before a state agency for **one year** from the date of termination of employment or expiration of office, in matters in which you were directly involved in the last **3 years** of your tenure.

The term "lobbyist" includes an executive agency lobbyist registered with the Commission as well as a legislative agent registered with the Kentucky Legislative Ethics Commission. *KRS 11A.010(12)*.

- Ø A former employee also is prohibited for **one year** following termination of employment from representing a person or business before a state agency in a matter in which the former employee was directly involved during the last three years of his state tenure.

"Representing" includes attending an agency proceeding, writing a letter, or communicating with an employee of an agency on behalf of someone else. *KRS 11A.010(17)*.

"Directly involved" modifies the word "matter" and means to work on personally or to supervise someone who works on personally. *KRS 11A.010(18)*.

FOR OFFICERS ONLY

After leaving state government, an officer must wait **6 months** before contracting or negotiating a contract with the agency he left.

- Ø A former officer is prohibited, for **6 months**, from knowingly, by himself or through a business of which he owns at least five percent, contracting or having an agreement with the state agency for which he formerly worked, or from benefitting from such a contract or agreement held by a third party. This restriction does not apply to former officers of the Department of Public Advocacy whose continual representation of clients is necessary in order to prevent an adverse effect on the client.

Ø An officer must wait **6 months** following termination of employment to accept employment, compensation or other economic benefit from a person or business contracting with, doing business with, or regulated by the state in matters in which he was directly involved during the last **3 years** of his tenure.

✓ **HOWEVER**, if you seek employment with an entity regulated by the agency for which you worked, or doing business with it, but you will be returning to your former employment or profession, then you may accept the position immediately, provided that:

1. You do not work on any matter involving the agency for which you worked for a period of 6 months, and
2. You do not act as a lobbyist or represent your new employer before your former state agency for a period of one year.

Source: KRS 11A.040(6), (7), (8), and (9)

<p style="text-align: center;"><i>Examples</i></p>

The Code of Ethics does not prohibit a former employee from accepting employment with a state college or university immediately following termination of his state employment.

A former employee was responsible for reviewing permit applications from various companies. He was not considered an officer. The former employee wishes to obtain employment with a company for which he had reviewed permit applications during his recent employment. His new employment will involve representing the company in new permit applications before the employee's former agency. The employee may accept employment with the company, but for one year following his termination, must refrain from representing the company before his

former agency in specific permit matters in which he was directly involved.

A commissioner of a regulatory department is considering seeking employment, upon resignation, with an entity that is regulated by the agency that he heads. The commissioner will be returning to his former profession. The commissioner may accept employment with the outside entity that his agency regulates, but for six months must refrain from working on any matter involving the agency that he formerly headed. In addition, for one year, the commissioner may not act as a lobbyist or represent his employer before his former state agency.

You are relieved from your job as a division director because of differences with your supervisors. Even though your termination was involuntary, you are still subject to the post-employment restrictions.

The former Park Manager, an officer, of a State Resort Park cannot immediately take a position with a restaurant located at a marina on a State Resort Park facility because the restaurant leases the marina facility from the Department of Parks. Doing so would mean the employee would be benefitting in part from an agreement and lease entered into by the Department which he was employed within six months of leaving the Department.

A public health department is not considered a "person" or "business" as defined by the Executive Branch Code of Ethics, so a public servant and officer working for the Cabinet for Health and Family Services may immediately go to work for a local public health department without violating post-employment provisions applicable to officers.

Advisory Opinions 92-8, 94-54, 94-69, 09-06, and 16-04

Administrative Proceedings: 08-012, 10-002, 11-007, and 14-018

FINANCIAL DISCLOSURE

Elected officials, officers, and candidates for executive branch offices are required annually to file annual Statements of Financial Disclosure (“SFD”). The disclosure statements are public records and are open to public inspection. The Commission is required to audit the statements.

The Commission will notify you if you are required to file a disclosure statement. The Statement of Financial Disclosure may be found on the Commission's website: <http://ethics.ky.gov/>.

Additionally, if you are not an officer or elected official, but wish to voluntarily file a statement of financial disclosure, you may do so. Please contact the Commission for a statement of financial disclosure form.

Every officer is required to file an SFD by April 15th of each year or within thirty (30) days of leaving employment with state government, whether voluntarily or involuntarily. Any officer failing to file a timely SFD could have their pay withheld until the SFD is filed with the Commission.

Any officer who fails to file an SFD or files fraudulent or insufficient information could be subject to fines and penalties consistent with a violation of the Ethics Code, including a \$5000 civil fine and a public reprimand.

You must file a statement of financial disclosure that includes:

1. Name, residential and business addresses;
2. Title of position/office which requires you to file;
3. Any other occupations of you or your spouse;
4. Positions held by you or your spouse in any other business;

5. Disclosure of any businesses in which you, your spouse or your dependent child have an interest of \$10,000 at fair market value or 5% ownership interest;
6. Name and address of any source of income in excess of \$1000 for any one source to you, your spouse or dependent child;
7. Sources of retainers received by you or your spouse relating to matters of the agency for which you work;
8. Any representation for compensation by you or your spouse for any person or business before the state agency for which you work;
9. All positions of a fiduciary nature held by you or your spouse in a business;
10. Street address or location of any real property in which you, your spouse or your dependent child own an interest of \$10,000 or more;
11. Sources of gifts of money or property with a retail value of more than \$200 from any one source to you, your spouse or your child, except those from a member of your family; and
12. Identity of creditors owed more than \$10,000, except debts arising from the purchase of consumer goods.

Source: KRS 11A.050 and 9 KAR 1:010

Administrative Proceedings: 08-024, 08-027, 08-028, and 09-004

ADVISORY OPINIONS

The Executive Branch Ethics Commission is authorized to interpret the provisions of KRS Chapter 11A and issue advisory opinions. If you are unclear as to the requirements of the Code of Ethics or have questions which are not answered by the Code, you may seek an advisory opinion from the Executive Branch Ethics Commission. The Commission must receive a written request for an advisory opinion at least two weeks prior to a scheduled meeting for the request to appear on the agenda for the meeting. Please include all information relative to the situation about which you inquire. The Commission staff may contact you for additional information prior to the issuance of an advisory opinion.

A draft opinion will be reviewed by the Commission at a public meeting which you may attend. The Commission will make a determination in response to your request. Upon approval of the draft, you will be sent a copy of the final advisory opinion. An advisory opinion may protect you in the event that a complaint is filed against you. Advisory opinions are the highest level of guidance available from the Commission regarding the requirements of the Executive Branch Code of Ethics.

Source: KRS 11A.110(1)

INVESTIGATIONS

The Executive Branch Ethics Commission must investigate an alleged violation of KRS Chapter 11A upon receiving a complaint signed under penalty of perjury. The Commission may also investigate an alleged violation upon its own motion. The Commission considers information received by the Commission staff in person, by telephone, by letter or through the media. Public servants who report conduct to the Commission may be protected from reprisal by their employer under the Whistleblower Act, KRS 61.102.

If the information indicates that a public servant may have violated the Ethics Code, the Commission will determine whether to initiate a preliminary investigation upon its own motion.

Within ten days of the initiation of the preliminary investigation, the Commission must forward to the alleged violator a copy of the complaint (if applicable) and a general statement of the law violated. Thus, the Commission will notify you by certified letter if you are under investigation.

Unless an alleged violator publicly discloses the existence of the preliminary investigation, the Commission is required to keep confidential the details of the preliminary investigation until the Commission determines probable cause of a violation and initiates an administrative proceeding to determine whether there has been a violation. However, the Commission may inform a referring state agency of the status of, or any action taken on, an investigative matter referred to the Commission by the agency. It may also for investigative purposes share evidence, at its discretion, with the Auditor of Public Accounts and the Personnel Board.

If, during the preliminary investigation, the Commission determines that evidence is not sufficient to show probable cause of a violation, the employee is confidentially informed that the investigation is terminated and such notification remains confidential.

This confidentiality is designed to protect the reputation of an employee who is falsely accused of a violation or against whom there is insufficient evidence to warrant further action.

The Commission may find probable cause of a violation during a preliminary investigation, but, due to mitigating circumstances (such as lack of financial gain to the employee, lack of loss to the state, and lack of impact on public confidence) may confidentially reprimand the alleged violator rather than initiate an administrative proceeding. A confidential reprimand is sent to the public servant by certified mail.

All administrative hearings of the Commission are public unless the Commission votes to go into executive session in accordance with the open meetings law. During the administrative hearing, the alleged violator has due process rights to be represented by counsel, call witnesses, introduce exhibits, and cross examine witnesses. A final determination whether a violation occurred is made by the Commission. A respondent may appeal a final Commission order to the Franklin Circuit Court for judicial review. A respondent must file such an appeal within thirty (30) days of being served with the Commission's order.

Source: KRS 11A.080, KRS 11A.100, KRS 61.102 and KRS Chapter 13B

Advisory Opinion: 13-02

PENALTIES

The Executive Branch Ethics Commission, upon clear and convincing proof of a violation of the Ethics Code, may:

- Issue a cease and desist order;
- Require you to file a report, statement, or other information;
- Issue a written, public reprimand which will be forwarded to your appointing authority;
- Recommend to your appointing authority that you be removed from office or your position; and
- Order you to pay a civil penalty of not more than **\$5,000** for **each** violation.

In addition:

- ✓ If the violation has substantially influenced the action taken by any state agency in any particular matter, such shall be grounds for voiding, rescinding, or canceling the action on such terms as the interest of the state and innocent third persons require.
- ✓ The commission **shall** refer to the Attorney General all evidence of violations of KRS 11A.040 for prosecution – violations are Class D felonies punishable by one to five years in jail and additional fines.
- ✓ An employee who fails to file with the Commission his statement of financial disclosure by the due date will have his salary withheld until the statement is filed.

Source: *KRS 11A.100 and KRS 11A.990*

EXECUTIVE AGENCY LOBBYING

Persons and entities engaged to make contacts with executive agency officials or staff in an attempt to influence a decision concerning the expenditure of state funds are executive agency lobbyists and are required to register with the Executive Branch Ethics Commission

An executive agency lobbyist must report to the Commission annually any expenditure made to or on behalf of an executive branch employee. In addition, the executive agency lobbyist is required to report any financial transaction he has 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 by the lobbyist at least ten days prior to the date it is filed with the Commission.

Executive agency lobbyists are issued a registration card upon registration. You may request to see the registration card of a person who is attempting to influence a decision to be made concerning state funds.

For more information on executive agency lobbying, you may request an executive agency lobbying handbook from the Executive Branch Ethics Commission.

Source: KRS 11A.201-246

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