



COMMONWEALTH OF KENTUCKY  
**EXECUTIVE BRANCH ETHICS COMMISSION**

JUDGE ROGER L. CRITTENDEN (RET.)  
CHAIR

SEN. DAVID K. KAREM (RET.)  
VICE CHAIR

CRIT LUALLEN  
JUSTICE DANIEL J. VENTERS (RET.)  
DAVID S. SAMFORD

CAPITAL COMPLEX EAST  
1025 CAPITAL CENTER DRIVE, SUITE #104  
FRANKFORT, KY 40601  
(502) 564-7954  
FAX: (502) 696-5091  
[HTTPS://ETHICS.KY.GOV/](https://ethics.ky.gov/)

SUSAN STOKLEY CLARY  
EXECUTIVE DIRECTOR

SUCHETA MEENA MOHANTY  
GENERAL COUNSEL

EDEN DAVIS STEPHENS  
DEPUTY GENERAL COUNSEL

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 24-02**

March 14, 2024

**RE:** Is KRS Chapter 11A applicable to the Ad Hoc members of the Kentucky State Board on Electric Generation and Transmission Siting?

**DECISION:** No, unlike the Public Service Commission, the Ad Hoc members of the Kentucky State Board on Electric Generation and Transmission Siting (the “Siting Board”) do not fall within the definition of an “officer” or of a “public servant,” as defined in KRS 11A.010, and therefore they are not subject to the requirements of KRS Chapter 11A.

This opinion is issued in response to a request from the Executive Director of the Public Service Commission on behalf of the Kentucky State Board on Electric Generation and Transmission Siting for an advisory opinion from the Executive Branch Ethics Commission (the “Commission”). This matter was reviewed at the March 14, 2024, meeting of the Commission and the following opinion is issued.

The following relevant facts were provided. The seven-member Siting Board is governed by KRS 278.700-716 and is charged with the review of applications for certificates to construct merchant electric generation facilities and the award of those construction certificates. The five permanent members of the Siting Board are executive branch officers, subject to the Executive Branch Code of Ethics. The five permanent members of the Siting Board are the three members of the Public Service Commission (PSC), the Secretary of the Energy and Environment Cabinet or the Secretary’s designee, and the Secretary of the Cabinet for Economic Development or the Secretary’s designee. Two ad hoc public members also serve on each Siting Board. Those ad hoc members are local residents appointed by the Governor for consideration of a specific proposed construction site in their county. KRS 278.702(1)(d) specifies that one ad hoc appointment by the Governor shall be the chair of the local planning commission, or, if none exists, the county judge/executive of the county or the mayor of the

city in which the construction will occur. If the facility to be approved is proposed to be located in more than one county, the county judges of those locales shall select their ad hoc representative.

The work of the Siting Board is inextricably intertwined with the work of the Public Service Commission (PSC) and the other state agencies regulating these electric generation and transmission facilities. The Siting Board is administratively attached to the PSC for administrative purposes, PSC staff serve as permanent administrative staff for the Board, and the Board's "siting fund" is a trust and agency account housed within the PSC. KRS 278.702(3) and KRS 278.716. Siting Board members do not receive a separate salary for their service on the Board, only reimbursement for travel and expenses directly related to service on the Board, and they are prohibited from having any financial interest in any facility coming for consideration before the Siting Board. KRS 278.702(4).

We now reach the question posed as to whether the Executive Branch Ethics Code contained in KRS Chapter 11A is applicable to the ad hoc members of the Siting Board. The Executive Branch Ethics Code is applicable to officers and public servants serving in the executive branch. Both the term "officer" and the term "public servant" are defined in KRS 11A.010. While the five permanent members of the Siting Board are full time state officers subject to the Executive Branch Code of Ethics, the two appointed ad hoc members are not "officers," as defined in KRS 11A.010(7). Ad hoc members are not included in the listing of major management personnel in the executive branch of government in KRS 11A.010(7)(a); they are not members of or full-time chief administrative officers of Boards enumerated in KRS 11A.010(7)(b); nor are they salaried members of an executive branch board or commission or serving on a personal service contract in a major management position, KRS 11A.010(7)(c)(d). As such, ad hoc members of the Siting Board are not executive branch officers for purposes of KRS Chapter 11A.

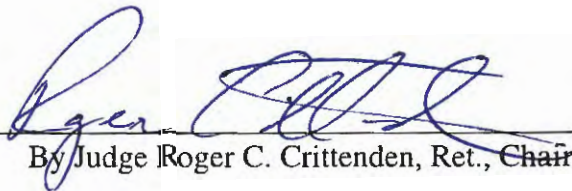
Neither do the ad hoc members of the Siting Board fit within the definition of "public servants," for purposes of KRS Chapter 11A. KRS 11A.010(9) defines public servants as employees of the executive branch and while some of the ad hoc members are local government employees, they are not so employed by the executive branch of state government and therefore, are not "public servants" for purposes of KRS Chapter 11A. This is not to say that those local government officials serving as ad hoc Siting Board members are not subject to other governmental ethics codes of conduct. KRS 65.003 requires the governing body of each city, county, urban-county, consolidated government, and charter county to adopt by ordinance a code of ethics to apply to all elected officials and employees of those governments. The provisions of those local codes are binding upon the local government ad hoc appointees and shall be enforced at that level.

While not a part of the Executive Branch Ethics Code as set out in KRS Chapter 11A, by Executive Order 2008-454 and Executive Order 2009-882 Governor Steven L. Beshear established an ethics code for state policy-making and regulatory boards and commissions and then listed boards subject to that ethics code. The list of those state policy-making and regulatory boards did not at that time include the Siting Board and so the provisions of EO 2008-454 and EO 2009-882 are inapplicable herein.

Therefore, the ad hoc members of the Siting Board are not subject to the Executive Branch Code of Ethics, although the Code does apply to the staff supporting the Board and to the members of the Board who are also executive branch employees.

The Executive Director's request also sets forth questions as to potential conflicts of interest that may occur for the ad hoc county government appointee when their county government elects to statutorily intervene in proceedings in which they are participating on the Siting Board. While ad hoc members may not be subject to the jurisdiction of the Executive Branch Ethics Code, they "do not check their ethical responsibilities at the door" to the Siting Board. In addition to other professional and governmental ethics codes applicable to ad hoc members, KRS 278.702(3) directs the Siting Board to promulgate administrative regulations to implement KRS 278.700 to 278.716. To avoid any actual conflicts or appearances of impropriety, the Commission recommends that the Siting Board consider adopting an internal ethics policy requiring Board members to abstain from any Board discussions, awarding of certificates, or reviewing of cases in which their office is or becomes a party to the proceedings, with the understanding that following such dictates is voluntary and not enforceable by the Executive Branch Ethics Commission.

**EXECUTIVE BRANCH ETHICS COMMISSION**



By Judge Roger C. Crittenden, Ret., Chair