

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 05-26**

May 27, 2005

**RE:** Must recipients of single county coal severance grants and/or budget bill line-items file an economic incentive disclosure statement pursuant to KRS 11A.233?

**DECISION:** No.

This opinion is in response to your May 13, 2005, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 27, 2005, meeting of the Commission and the following opinion is issued.

Recently, due to a reorganization, the "single county coal severance program" was transferred from the Cabinet for Economic Development (the "Cabinet") to the Governor's Office for Local Development (GOLD), formerly known as the Department for Local Government. You ask for an advisory opinion from the Commission as to whether GOLD needs to provide recipients of single county coal severance grants and/or budget bill line-items with an economic incentive disclosure statement similar to the one that the Cabinet provides to recipients, pursuant to KRS 11A.233. KRS 11A.233 states that a person attempting to influence the Cabinet, or board or authority within or attached to the Cabinet, relating to an economic incentive package is not considered an executive agency lobbyist. However, before any board or authority within or attached to the Cabinet may take final action to award an economic incentive package, the beneficiary of the incentive package must file a disclosure statement with the Cabinet, which subsequently shall file the disclosure statement with the Commission.

This request specifically seeks clarification from the Commission as to whether GOLD must continue to require disclosure when KRS 11A.233 specifically refers to the Cabinet rather than GOLD, which is now administering the program. You also seek clarification as to whether GOLD needs to require disclosure for both grants and line items. Finally, you ask that to the extent a disclosure statement is required, is it required in all instances or just certain instances, in which case you ask what those instances might be.

According to KRS 11A.233:

(1) For purposes of KRS 11A.201 to 11A.246, the term "executive agency lobbyist" does not include a person acting to promote, oppose, or otherwise influence the outcome of a decision of the Cabinet for Economic Development or any board or authority within or attached to that cabinet relating to the issuance or award of a bond, grant, lease, loan, assessment, incentive, inducement, or tax credit pursuant to KRS 42.4588, 103.210, Chapter 154, or Chapter 224A, or otherwise relating to any other component of an economic incentive package.

(2) Notwithstanding subsection (1), before any board or authority within or attached to the Cabinet for Economic Development takes final action on any contract or agreement by which any bond, grant, lease, loan, assessment, incentive, inducement, or tax credit is awarded, the beneficiary of an economic incentive package shall file with the approving board or authority a disclosure statement which shall contain:

(a) The identity of the beneficiary of an economic incentive package and any person employed to act on its behalf in its dealings with the Cabinet for Economic Development or any board or authority within or attached to that cabinet regarding the matters to which the contract or agreement refers; and

(b) The details of any financial transaction as defined in KRS 11A.201(5)(a) between the beneficiary or any other person listed as an employee or agent of the beneficiary as required by paragraph (a) of this subsection and any agent or public servant of the Cabinet for Economic Development, any member of any board or authority within or attached to that cabinet, or any other public servant involved in the negotiation of the economic incentive package.

(3) After final action by the board or authority, the Cabinet for Economic Development shall file the disclosure statement described in subsection (2) of this section with the Executive Branch Ethics Commission, but the cabinet may delete information identifying the beneficiary of the economic-incentive package if the cabinet believes that identification would damage economic development.

As written, KRS 11A.233 pertains only to decisions of the Cabinet or any board or authority within or attached to the Cabinet, relating to the issuance or award of grants and the like. Thus, the exception provided in KRS 11A.233(1) regarding the term "executive agency lobbyist" only applies to persons acting to promote, oppose, or otherwise influence the outcome of decisions by the Cabinet, or any board or authority within or attached to the Cabinet. It would

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not apply to individuals seeking to influence the outcome of decisions by any other agency, board, or authority. While KRS 11A.233 requires the beneficiary of an "economic incentive package" to file a disclosure statement in lieu of registering as a lobbyist, this would only be the case when the grant or award involves the Cabinet or a board or authority within or attached to the Cabinet. Filing such a disclosure statement with GOLD would thus not be required by persons seeking coal severance grants, but also would not remove the requirement of such persons to register as executive agency lobbyists, if applicable. Consequently, GOLD would have no requirement to, in turn, file a disclosure statement with the Commission.

However, please be advised that "executive agency lobbyist" is defined in KRS 11A.201(8) as follows:

(a) "Executive agency lobbyist" means any person engaged to influence executive agency decisions or to conduct executive agency lobbying activity as one (1) of his main purposes on a substantial basis.

(b) "Executive agency lobbyist" does not include an elected or appointed officer or employee of a federal or state agency, state college, state university, or political subdivision who attempts to influence or affect executive agency decisions in his fiduciary capacity as a representative of his agency, college, university, or political subdivision.

Note that "persons" attempting to obtain single county coal severance grants from GOLD, if they are not elected or appointed officers of a political subdivision, could be considered executive agency lobbyists required to register with the Commission and to follow the other requirements of KRS 11A.201 through 11A.246.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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**BY CHAIR:** James S. Willhite