

Executive Branch Ethics Commission
ADVISORY OPINION 07-14

May 10, 2007

RE: Executive Branch Agencies
Amends Advisory Opinion 95-4

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") on its own motion. This matter was reviewed at the May 10, 2007 meeting of the Commission and the following opinion is issued.

KRS 11A.010(9) - (10) defines "public servant" to include all employees in the "executive branch," and "agency" to mean every state office, cabinet, department, board, commission, public corporation, or authority in the "executive branch" of state government. In order to establish the jurisdiction of the Executive Branch Code of Ethics, the Commission must determine what entities constitute the "executive branch" of state government.

In November 1993, the commission issued an advisory opinion that defined executive branch agencies as those agencies that were a part of the financial reporting entity of the Commonwealth of Kentucky, excluding universities, judicial, and legislative entities. In March of 1995, the Commission reviewed a more authoritative listing of agencies within the executive branch, Information Bulletin No. 171, *the Executive Branch of Kentucky State Government*, published periodically by the Legislative Research Commission, and amended its previous opinion to include agencies listed in that publication as executive branch agencies for the provisions of the Executive Branch Code of Ethics. Since that date, the Commission has considered all agencies which are listed in the most current publication of that document to be executive branch agencies, subject to amendment by the legislature.

Given that the Legislative Research Commission is no longer updating Information Bulletin No. 171, with October 2002 being the last time this publication was updated, the Commission no longer has that source to use in determining which entities/agencies are considered to be within the executive branch of the Commonwealth for purposes of applying the Executive Branch Code of Ethics.

Thus, for jurisdictional purposes of applying the Executive Branch Code of Ethics for determining which entities are within the executive branch of state government, the Commission reverts to its original source which is whether or not an entity is within the financial reporting entity of the Commonwealth as determined by the Finance and Administration Cabinet and audited by the Auditor of Public Accounts, both the primary government and its component

units, excluding state colleges, universities, legislative, and judicial entities, and subject to revision by the legislature. All employees of such agencies are considered to be public servants subject to the provisions of KRS Chapter 11A.

KRS 12.020 and 12.023, updated July 12, 2006, also attempts to enumerate the departments, program cabinets, and major administrative bodies within the executive branch, but the listing is not intended to be all-inclusive for all administrative bodies. The listing, if kept current, can be used to determine the majority, but not all, of the executive branch agencies within the primary government of the Commonwealth. In the Commission's review of the provisions, it notes that general government cabinet regulatory boards and commissions are not included in this statute, although they are certainly intended to be within the executive branch of state government.

The Commission lists in Appendix A of the *Guide to the Executive Branch Code of Ethics* (May 2007) those entities/agencies that it has determined are executive branch agencies based on the above sources. The list is intended to be all inclusive, but is subject to error or omission.

Moreover, any foundation that is created for the benefit of any of the listed agencies, and for which donated funds are restricted to the activities of that agency, is also considered to be an executive branch agency of which the employees are subject to the Executive Branch Code of Ethics in KRS Chapter 11A. This interpretation reverses previously issued advisory opinions that viewed such foundations not to be executive branch agencies for purposes of applying the Executive Branch Code of Ethics.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Vice Chair: Cynthia C. Stone