

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93-53

October 18, 1993

RE: Are members of state boards and commissions governed by the executive branch code of ethics?

This letter is in response to several requests for advisory opinions from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 23 and October 18, 1993, meetings of the Commission, and the following opinion is issued.

Questions have been raised by various state agencies as to whether members of state boards and commissions are governed by the Executive Branch Code of Ethics and, thus, subject to the provisions of KRS Chapter 11A.

KRS 11A.010(9) states:

- (9) "Public servant" means:
 - (a) The Governor;
 - (b) The Lieutenant Governor;
 - (c) The Secretary of State;
 - (d) The Attorney General;
 - (e) The Treasurer;
 - (f) The Commissioner of Agriculture;
 - (g) The Superintendent of Public Instruction;
 - (h) The Auditor of Public Accounts;
 - (i) Each Railroad Commissioner; and
 - (j) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

KRS 11A.010(7):

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the State Board for Elementary and Secondary Education, the State Board for Adult and Technical Education, and any other management personnel with procurement authority;

The provisions of KRS Chapter 11A prohibit certain conduct by public servants. The Commission believes that part-time board and commission members paid on a per diem basis are not public servants as defined above, and thus, not subject to the provisions of the Executive Branch Code of Ethics in KRS Chapter 11A.

However, the statute above specifically lists several state boards and commissions whose members are considered public servants in the executive branch. These part-time board and commission members are subject to the provisions of KRS Chapter 11A. Additionally, if a part-time member of a state board or commission is also a state employee, and receives a salary from the Commonwealth, then that member is subject to the provisions of KRS Chapter 11A by nature of his state employment.

Although the Commission does not consider other part-time board and commission members executive branch employees under KRS Chapter 11A, we encourage state board and commission members to follow the highest standards of ethics in administering the law.