



COMMONWEALTH OF KENTUCKY  
**EXECUTIVE BRANCH ETHICS COMMISSION**

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Executive Branch Ethics Commission  
**ADVISORY OPINION 14-03**  
November 10, 2014

**RE:** May an employee of the Office of Attorney General provide security to the Attorney General on state time if the Attorney General is attending a private or political event?

**DECISION:** Yes, within limitations.

This opinion is issued in response to your request for an opinion from the Executive Branch Ethics Commission (the "Commission"). The matter was reviewed at the November 10, 2014, meeting of the Commission and the following opinion is issued.

You seek to clarify and ensure that provisions made by the Office of Attorney General ("OAG") for the security of the Kentucky Attorney General ("AG") comply with the Executive Branch Code of Ethics ("Code of Ethics"). Specifically, you wish to ensure that the OAG investigator tasked with protection of the AG is in compliance with the Code of Ethics while providing security at both public and private events.

You state that the AG is a highly visible member of the Commonwealth's government. As its chief law officer and legal advisor, the AG must frequently take actions and make decisions that may be unpopular. Additionally, as an elected constitutional officer, the AG is confronted with and responds to a variety of contentious issues. According to your letter, this has resulted and continues to result in harassing communications and threats against the Attorney General and members of his family. The Kentucky State Police ("KSP") provides a security detail to select members of the executive branch, specifically the Governor and Lieutenant Governor. This protection is provided through KSP's Executive Security Branch. This protection does not extend to the AG. A recent evaluation by the OAG's Department of Criminal Investigations, in collaboration with the KSP's Executive Security Branch Commander, has recently evaluated the AG's vulnerability with respect to his security. This evaluation recommended that the AG be provided with a security escort when attending or travelling to events due to past and potential future threats against him and his family. You provided a copy

of the Memorandum from the Commissioner of the Department of Criminal Investigations regarding this recommendation, a copy of which is attached to this advisory opinion.

In order to respond to these security concerns, an OAG investigator currently provides security for the AG. This individual is an unclassified employee under Kentucky Revised Statutes Chapter 18A. You also indicate that he is a sworn police officer and fully qualified to provide personal security for the AG.

According to your letter, the AG remains a public figure; thus he is potentially at risk while attending public and private events. You are asking for an opinion from this agency as to whether this employee may provide security to the AG on state time if the AG is attending a private or political event and ask us to advise of any concerns we have regarding the provision of security to the AG.

KRS 11A.005 provides:

1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

- (a) A public servant be independent and impartial;
- (b) Government policy and decisions be made through the established processes of government;
- (c) A public servant not use public office to obtain private benefits; and
- (d) The public has confidence in the integrity of its government and public servants.

(2) The principles of ethical behavior for public servants shall recognize that:

- (a) Those who hold positions of public trust, and members of their families, also have certain business and financial interests;
- (b) Those in government service are often involved in policy decisions that pose a potential conflict with some personal financial interest; and
- (c) Standards of ethical conduct for the executive branch of state government are needed to determine those conflicts of interest which are substantial and material or which, by the nature of the conflict of interest, tend to bring public servants into disrepute.

KRS 11A.020(1) provides:

(1) No public servant, by himself or through others, shall knowingly:

- (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
- (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
- (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
- (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

The Commission specifically provided guidance on employee time and attendance in Advisory Opinion 07-8, attached. In that opinion, the Commission confirmed its longstanding belief that, generally speaking, the proper use of state time and attendance by employees is a management decision. In support of its opinion in Advisory Opinion 07-8, the Commission cited to the Commonwealth of Kentucky Employee Handbook, which still provides as follows in regard to "Work Schedules":

*State employees are expected to be at work on time. A full-time employee shall be required to work 37 ½ hours per week (some employees regularly work 40 hours a week) unless specified otherwise by the Appointing Authority or the Statutes. The typical workweek runs Monday through Friday, 8:00 a.m. till 4:30 p.m., with time off each day for lunch. (KRS 337.355) You are also entitled to rest breaks, according to KRS 337.365.*

*Agency managers have discretion in deciding what work hours best meet the needs of particular work place. If you work in a state hospital or correctional facility, for example, you may work a different shift than you[r] office counterparts. Your lunch period may be less than an hour if it is necessary for staff to rotate to provide continuous coverage. In some units, employees must all take their rest break at the same time; in others, the work demands a staggered schedule. These are agency management decisions, so long as the agency complies with applicable laws.*

*Another area of discretion is flextime scheduling. An agency may offer some or all its employees the opportunity to design their own work schedules. Usually, agencies operating under flextime require that their employees work certain "core" hours during each day to ensure that there is a steady flow of work during the peak hours when services are most needed.*

Thus, generally speaking, agency management should decide what is proper use of state time by a public servant employed by that agency. See Advisory Opinion 03-30, attached.

However, there are limitations to this general rule. If a public servant flagrantly misuses his work time and attendance for personal or private benefit, or he is directed to abuse his work time and attendance for the personal or private benefit of his appointing authority or some other member of agency management, then a violation of KRS 11A.020(1) could occur. Public servants who egregiously abuse the time for which they are being compensated by taxpayers for their own private benefit are using their official positions to give themselves an advantage and a financial gain in disregard of the public interest. Public servants who, for their own private benefit, direct others to egregiously abuse the time for which they are being compensated by the taxpayers are likewise using their official positions to give themselves an advantage and a financial gain in disregard of the public interest.

Such is not the case here, however. The situation you describe is not one where either the public servant or his appointing authority would be misusing the work time and attendance of the public servant for either's personal or private benefit. Rather, the necessity for the public servant's time to be used in this manner arises because of the official position held by his appointing authority, the AG. As you state in your opinion request, the AG is a highly visible member of the Commonwealth's government who must frequently take actions and make decisions that may be unpopular. We accept as fact that contentious issues faced by the current AG have resulted and continue to result in harassing communications and threats against him and members of his family, necessitating the need for personal security. As this need arose because of the AG's government service, rather than from his personal life, he should not be required to bear the financial burden of this security. As you point out, the Governor and Lieutenant Governor are already provided security at the taxpayers' expense, but this security is not extended to the AG. It is therefore reasonable for an employee of the OAG, who is a sworn police officer and fully qualified to provide personal security, to be assigned the duty of providing personal security for the AG.


It is also the opinion of the Commission that this employee may provide security to the AG on state time regardless of whether the AG is attending an official function or a private or political event, if such event exposes the AG to a reasonable expectation of risk. The AG does not cease to be the AG when he leaves the Capitol to attend a private or political event. His personal security needs remain the same regardless of what the nature of the event is he is attending. Therefore the OAG employee who has been detailed to provide security to the AG, when acting in this capacity, is performing his official duties and should be compensated accordingly, whether through his regular compensation or by means of compensatory leave.

This advisory opinion is based on the security need which has been identified for this AG at this time and assumes that the individual who will be providing the security will be acting in that capacity, and only in that capacity, when he attends private or political events with the AG. No campaign related activities may be conducted on state time by this individual or any other employee of the Executive Branch. Nor may this individual, or any other employee of the

Executive Branch, be asked to run errands or perform other personal tasks for the AG while on state time.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

  
By Chair: W. David Denton

Enclosures: Memorandum RE: Recommendation for the Executive Protection of the AG  
Advisory Opinion 07-8  
Advisory Opinion 03-30

# Memorandum

To: Mitchel Denham  
Assistant Deputy Attorney General  
Criminal Division

From: Richard A. Badaracco  
Commissioner, Department of Criminal Investigations, OAG

Date: September 25, 2014

RE: Recommendation for the Executive Protection of the Attorney General

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Based on my collaboration with the KSP's Executive Security Branch Commander, DCI's recent assessment analysis of prior threats to the Office of the Attorney General (including the Attorney General himself) and the sensitivity of recent subject matter dealt with by the Attorney General, I strongly recommend that the Attorney General be provided protection for public and/or any publicized events. DCI's assessment has revealed that the Attorney General's Office and/or the Attorney General has received a variety of threats, including but not limited to the following: threatening telephone calls, letters and emails; individuals approaching and threatening the Attorney General; an individual showing up at the Attorney General's residence and harassing his family; and harassing mail being sent to his home and office.

Threats against state and federal dignitaries have escalated over the past decade, partially due to an increase in public access on social media. The Internet not only allows people to express their negative thoughts to the general population and to other like-minded individuals, but it also allows these individuals to stay many times anonymous. The reality is that the actual publicized threat is not a good indicator that someone will actually follow through with an attack, making it more difficult for law enforcement to assess credible threats. However, history has shown that the biggest concern comes from the individual or group that does not communicate the threat directly or indirectly to the dignitary. These attacks have grown in number and in success against local, state, and federal politicians in recent years.

It's difficult to know the exact number of attack incidents nationally, but we can typically predict an increase in threats and potential for harm against a dignitary. Threats on dignitaries tend to peak during times of public exposure. And it does not necessarily have to be considered negative exposure. The following events or subject matter are likely to draw in more threats and concerning interest: 1) campaigning; 2) involvement with political, environmental, religious, prosecution, social, and other "hot topic" issues of the day; and 3) media exposure from political attacks, increase in notoriety, or just consistent media exposure. The more that a dignitary is involved with any of these potential threat exposure

indicators, the more likely that the official may be targeted by an individual who wants to harm him. In the current situation with Attorney General Conway, he is approaching maximum exposure with these potential indicators.

This has been noted with an increase in threatening calls, letters and emails to the Office of the Attorney General. The communications threaten harm to the Attorney General and his family.

According to the KSP's Executive Protection Branch, today's trends point to an increase of organized attacks and attacks of opportunity on all public officials. A typical police officer is not aware of the psychology and methodology of a would be attacker and will not be able to deter, or at least intercept and redirect the attacker. It is important that individuals assigned this duty receive adequate protection training in order for the dignitary to be protected at all times. Currently, the DCI has one criminal investigator who just graduated from the KSP's Dignitary Protection School. The KSP is planning to hold another school in spring 2015 and is providing the Attorney General four seats for the class.

Executive Branch Ethics Commission  
**ADVISORY OPINION 07-8**  
May 10, 2007

**RE:** Guidance on Employee Time and Attendance

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

As a result of the conduct of several recent investigations, the Commission wishes to provide guidance to executive branch employees regarding time and attendance in the performance of their job duties.

The Commission points out that the Commonwealth of Kentucky Employee Handbook, found on the Personnel Cabinet's website, provides:

*State employees are expected to be at work on time. A full-time employee shall be required to work 37 1/2 hours per week (some employees regularly work 40 hours a week) unless specified otherwise by the Appointing Authority or the Statutes. The typical workweek runs Monday through Friday, 8:00 a.m. till 4:30 p.m., with time off each day for lunch. (KRS 337.355). You are also entitled to rest breaks, according to KRS 337.365.*

*Agency managers have discretion in deciding what work hours best meet the needs of particular work places. If you work in a state hospital or correctional facility, for example, you may work a different shift than your office counterparts. Your lunch period may be less than an hour if it is necessary for staff to rotate to provide continuous coverage. In some units, employees must all take their rest breaks at the same time; in others, the work demands a staggered schedule. These are agency management decisions, so long as the agency complies with applicable laws.*

*Another area of discretion is flex-time scheduling. An agency may offer some or all of its employees the opportunity to design their own work schedules. Usually, agencies operating under flex-time require that their employees work certain "core" hours during each day to ensure that there is a steady flow of work during the peak hours when services are most needed.*



**EXECUTIVE BRANCH ETHICS COMMISSION**  
**ADVISORY OPINION 07-8**

May 10, 2007

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Although the Commission believes the proper use of state time and attendance by employees is a management decision as stated above, it also believes pursuant to previously issued advisory opinions (copies of which are enclosed) that if a public servant flagrantly misuses his work time and attendance for personal use, that such action could rise to the level of violating the provisions of KRS 11A.020(1) (c) and (d) below:

- (1) No public servant, by himself or through others, shall knowingly:
  - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
  - (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

KRS 11A.005(1) provides that "it is the public policy of this Commonwealth that a public servant work for the benefit of the people of the Commonwealth." Excessive misuse of state time by public servants on a continual basis, such as not completing the required 37.5 or 40 hours of work required per week, creates privileges and preferred treatment for employees in derogation of the public interest at large. Public servants who egregiously abuse the time for which they are being compensated by taxpayers are using their official positions to give themselves an advantage and a financial gain disregarding the public interest.

Further, the Commission believes that employees have a duty to accurately record their time worked and leave time submitted to their agencies on their official timesheets. All compensatory time worked, as well as taken as leave time, should be properly reflected on employees' timesheets on the days worked and/or taken as leave time. Employees should **never** keep an "additional set" of time records to reflect their actual time worked that does not agree with the actual time records submitted on their timesheets to their agencies. Agency timesheets should always accurately reflect the actual days and hours that a public servant worked.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Vice Chair: Cynthia C. Stone

Enclosures: Advisory Opinion 98-15  
Advisory Opinion 98-21

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 03-30**

July 31, 2003

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RE: Must employee use personal leave time for service on Board of Regents?

DECISION: Decision should be left to the discretion of management, provided it is within Personnel Cabinet policies.

This opinion is issued in response to your July 29, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 31, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed as a branch manger for the Kentucky Revenue Cabinet (the "Cabinet"). On May 20, 2003, Governor Paul Patton appointed you to serve on the Kentucky State University Board of Regents (the "Board"). You were sworn in on July 24, 2003, and attended your first Board meeting and committee meeting on July 25, 2003.

You have questions regarding the use of leave time for attendance at such meetings. The Personnel Cabinet has advised you that an employee of the Department of Parks was advised that he did not have to use personal leave time for any time spent on matters for the Board. It is your understanding that such service is considered "authorized office time." You communicated this information to officials at your Cabinet who have requested that you obtain an opinion from the Commission on this matter.

In Advisory Opinion 94-60 (a copy of which is enclosed), the Commission stated that an executive branch employee serving on the Commission on Women should use annual or compensatory time for any normal work hours spent on Commission on Women business.

However, in Advisory Opinion 98-15 (a copy of which is enclosed), the Commission stated that it believed that the proper use of state time by employees is an agency management decision not under the jurisdiction of the Commission. Accordingly, the Commission attempts to clarify its opinion.

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 03-30**

July 31, 2003

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The Commission believes that agency management should decide what is proper use of state time by an employee, including whether service on a state board or commission is a proper use. Thus, Cabinet management, not the Commission, should decide whether the employee's service on the Board is a proper use of the employee's state time, and thereby whether it should be considered part of the employee's official duty. If Cabinet management believes that time spent on Board matters is a proper use of state resources and consequently a part of the employee's official duty, the Executive Branch Code of Ethics would not prohibit the use of leave time for such service on the Board, if such use of leave time is within Personnel guidelines.

The Commission points out, however, that if your service for the Board is considered by management as part of your official duty, and therefore you do not use leave time for such activity, you are prohibited from accepting additional compensation (from the Board) for such service, pursuant to KRS 11A.040(5) provided below:

(5) A public servant shall not knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

Additionally, the Commission still believes that you should use personal leave time for service on the Board if Cabinet management does not believe that such service is part of your official duty for the Cabinet.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinion 94-60  
Advisory Opinion 98-15