



COMMONWEALTH OF KENTUCKY

EXECUTIVE BRANCH ETHICS COMMISSION

<http://ethics.ky.gov/>

W. DAVID DENTON
CHAIR

WILLIAM G. FRANCIS
VICE CHAIR

JUDGE SHEILA R. ISAAC (RET.)
CHRISTOPHER L. THACKER
THERESA F. CAMORIANO

KATHRYN H. GABHART
EXECUTIVE DIRECTOR

MISTY DUGGER JUDY
GENERAL COUNSEL

#3 FOUNTAIN PLACE
FRANKFORT, KY 40601
(502) 564-7954
FAX: (502) 564-2686

Executive Branch Ethics Commission

ADVISORY OPINION 17-05

March 13, 2017

RE: Are public servants in the position of Policy Research Consultant at the Public Service Commission considered “officers” as that term is defined in KRS 11A.010(7)?

DECISION: No.

This opinion is issued in response to your request for an advisory opinion from the Executive Branch Ethics Commission (the “Commission”) regarding whether the position of Policy Research Consultant at the Public Service Commission (“PSC”) should be considered an “officer” as defined in KRS 11A.010(7).

The individuals in the position of Policy Research Consultant with the PSC have been required to file Statements of Financial Disclosure (“SFD”) since 2014 when it was first reviewed by Commission Staff who determined that these public servants should be considered “officers” pursuant to KRS 11A.010(7). You request that the Commission revisit this issue through a formal advisory opinion. You have provided the Position Descriptions for these three employees and the Job Class Specification. In your opinion, these employees should not be considered “major management personnel.” You indicate that they serve in an advisory capacity, but do not manage employees, determine how state funds are spent or dispersed, and do not make the ultimate decision on policy decisions.

The Job Class Specification for the PSC Policy and Research Consultant indicates that the characteristics of the job include performing “highly complex and extensive research and analysis of policy issues for the [PSC] using advanced research techniques. Participates in the evaluation and development of major Commission policies. . . .” Examples of duties and responsibilities include:

Is responsible for doing highly complex research and policy planning and analysis for Public Service Commission issues. Determines the necessary resources needed to conduct research and to develop strategic planning and analysis on specialized issues. Organizes studies to determine the impact of potential Commission

ADVISORY OPINION 17-05

March 13, 2017

Page 2 of 4

operating policies. Makes presentations to the Public Service Commissioners and other officials. Prepares drafts of reports and other materials for use in presentations. Consults with subject-matter experts to obtain information. Attends public meetings and legislative hearings on topics of interest. Meets with federal, state and local agencies to obtain and give information on various Public Service Commission policy issues. Attends seminars and special presentations on current policy issues. Reviews printed material and electronic resources for ideas and implementation strategies. Keeps abreast of new research in utility areas.

The Position Descriptions for the three employees vary slightly, but indicate that the Policy and Research Consultants do not manage employees, are not involved in determining how state funds are expended or dispersed, and do not make final policy decisions, but are involved in conducting research that may influence the policy makers. In 2014, the Commission staff reviewed one employee who worked in this position and determined the position to be an “officer.” Since that time, you now have three employees with this position title. Everyone holding that position, including the individual in question, filed SFDs with the Commission since that time, as all “officers” are required to do. These employees have not yet filed their 2016 SFDs pending the issuance of this Advisory Opinion.

KRS 11A.010(7) defines “officer” as follows:

"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, executive directors, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Kentucky Teachers' Retirement System board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Kentucky Occupational Safety and Health Review Commission, the Kentucky Board of Education, the Council on Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection;

In determining whether a position meets the definition of “officer,” the Commission first considers the definition in KRS 11A.010(7), which provides a list of job titles, which is not exhaustive. For instance, the position of “principal assistants” is included in KRS 11A.010(7); however, this position was abolished in 2004 and replaced with six different titles: Executive Assistant, Policy Advisor, Special Assistant, Administrative Coordinator, Executive Advisor, and

ADVISORY OPINION 17-05

March 13, 2017

Page 3 of 4

Staff Assistant. Public Servants in these positions are generally required to file SFDs unless the Commission determines a particular public servant would not be considered “major management” after a review of the job duties and responsibilities.

For all other positions, the Commission reviews, among other considerations, job specifications, position descriptions, and further information provided by an agency concerning the employee’s job responsibilities. The Commission has issued several advisory opinions referencing the factors used to determine whether a public servant is an officer. In Advisory Opinion 93-32, the Commission determined that a field representative did not have authority to disburse funds or make policy decisions; thus, the public servant was not an officer. In Advisory Opinion 96-14, the Commission determined that a branch manager was not an officer because the public servant was not a policy maker, did not have input into budgets or contracts, and only provided advice concerning decisions on major maintenance projects. In Advisory Opinion 00-34, the Commission addressed a situation where someone had the working title of “Director” when in reality the person was an “administrative assistant.” Advisory Opinion 03-04 pertains to an employee with the Kentucky Housing Corporation, which has its own personnel system, that was determined to not be an officer even though the public servant had the title of “director” because he was not a director of a division and functioned more as a branch manager would under the standard state personnel system.

Inversely, when determining a public servant to be an officer, the Commission has relied on the following factors: when a public servant is authorized to purchase goods or have procurement authority (Advisory Opinion 94-29), when a public servant supervises major projects, functions as a representative for upper management, is conferred decision making authority by statute or regulation, or coordinates activities of a division (Advisory Opinion 14-02).

Generally, speaking, when the Commission reviews the job duties of potential officers, it looks for factors such as the employee has responsibility for managing a division, department or Cabinet, supervises a geographical region, oversees a state facility, coordinates a state program, makes decisions concerning how state funds are spent or dispersed, or makes decisions on setting state policy. The Commission may also determine that any public servant who is in a position that could require him or her to step into the role of the decision-makers in the event such individual cannot fulfill his or her role, such as an assistant executive director, then that public servant may also be an officer.

The Commission has reviewed the job requirements for PSC Policy and Research Consultant. The job specifications indicate that the Policy and Research Consultant compiles information and makes recommendations that may ultimately influence the decision-makers, but has no authority to set that policy or step into the role of the decision-makers to set such policy. Therefore, the Commission determines that the position should not be considered “major management” as that term is used in KRS 11A.010(7).

Executive Branch Ethics Commission

ADVISORY OPINION 17-05

March 13, 2017

Page 4 of 4

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: W. David Denton