



COMMONWEALTH OF KENTUCKY

**EXECUTIVE BRANCH ETHICS COMMISSION**

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Executive Branch Ethics Commission  
**ADVISORY OPINION 17-09**  
September 18, 2017

**RE:** Are the newly created non-voting advisors to the Kentucky Board of Education that were established by Executive Order 2017-364 covered by the full Executive Branch Code of Ethics as are the members of the Kentucky Board of Education pursuant to K.RS 11A.010(7)?

**DECISION:** No

This opinion is issued in response to your August 9, 2017 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 18, 2017 meeting of the Commission and the following opinion is issued.

On behalf of the Kentucky Board of Education ("KBE") you have requested that the Commission review an issue presented by Executive Order 2017-364 recently issued by the Governor and its implications for newly created positions under that order.

KBE is organized pursuant to KRS 156.029 and 156.035. The Executive Order 2017-364 states at page 5 in Paragraph XIII, that the Governor "altered" K.RS 156.029 to "include four (4) non-voting advisors" to the KBE. The Executive Order further states:

These non-voting advisors **are not to be considered Members of the Board** but are entitled to be present at all meetings, including closed sessions, and to be fully heard and to participate in all topics of discussion.

(emphasis added). K.RS 11A.010(7) provides a definition for the positions in the Executive Branch that are considered "officers" and are covered by the application of the full Executive Branch Code of Ethics:

"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,

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division directors, members and full-time chief administrative officers of the Parole Board, Kentucky Claims Commission, 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;

(emphasis added). It is the opinion of the Commission that the Governor did not intend to make the advisors to the KBE full members of the KBE with all of the duties and responsibilities that KBE members carry.

However, the Commission recommends that these advisors avoid in engaging in conduct that would reflect negatively on the KBE or bring the KBE in disrepute. At a minimum, in light of the fact that by nature of the language in Paragraph XIII of Executive Order 2017-364 these advisors will be engaging in influencing the decision-makers on the KBE, these advisors should agree to follow the dictates of Executive Orders 2008-454 and 2016-377 applying three provisions of the Executive Branch Code of Ethics to board and commission members with the understanding that following such dictates is voluntary and not enforceable by the Executive Branch Ethics Commission.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**



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By Chair: William G. Francis

ATTACHMENTS: Executive Orders 2017-364, 2008-454, and 2016-377.