



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
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Executive Branch Ethics Commission
ADVISORY OPINION 19-05
July 16, 2019

RE: Are the Members of the Unemployment Insurance Commission covered by the definition of “salaried” members of a board or commission as defined by KRS 11A.010(21) and, as such, are they covered by the expanded definition of “officer” in KRS 11A.010(7) as enacted by House Bill 81?

DECISION: Yes.

This opinion is issued in response to your July 1, 2019, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 16, 2019 meeting of the Commission, and the following opinion is issued pursuant to KRS 11A.110(1).

The Unemployment Insurance Commission (“UIC”) is established by KRS 341.110 as an administrative body in the Education and Workforce Development Cabinet (“Cabinet”). The Commission is comprised of three members: the Secretary of the Cabinet, or his or her duly authorized designee, serves as *ex officio* chair, and two (2) members appointed by the Governor to represent labor and employers. KRS 341.110(5) provides that “the compensation of the members representing labor and employers shall be \$12,000 each per annum.” You also indicate that these members do not receive benefits for their service on the Commission and their duties require substantially fewer hours of work than is necessary to be considered full-time employees.

House Bill 81 of the 2019 General Assembly Session, which was enacted on June 27, 2019, expanded the definition of which individuals are covered by the Executive Branch Code of Ethics. KRS 11A.010 provides the statutory definitions section of the Ethics Code was

amended to expand the definition of “officer” and include a new definition for “salaried” as follows:

(7) "Officer" means:

(c) Salaried members of executive branch boards and commissions; and

(21) "Salaried" means receiving a fixed compensation or benefit reserved for full-time employees, which is paid on a regular basis without regard to the actual number of hours worked.

You ask whether the changes enacted by House Bill 81 would apply the definition of “officer” to the appointed members of the UIC. You also refer in your footnote to the fact that the Cabinet Secretary and his designee are both currently considered “officers” by nature of their service in positions already specifically listed in KRS 11A.010(7)(a). Therefore, the Commission will only focus its review of your question concerning the two members of the UIC appointed by the Governor.

We must focus our review on the definition of “salaried” by breaking down its terms. First, salaried means receiving a “fixed compensation.” The UIC members are receiving a fixed compensation as determined by the \$12,000 yearly salary established by KRS 341.110(5).

Second, salaried may also mean receiving “a benefit reserved for full-time employees.” The UIC members do not receive any benefits other than the fixed salary as determined by KRS 341.110(5); however, historically, they did receive health insurance and retirement by the previous gubernatorial administration. The current administration discontinued those benefits with the most recent appointees to the UIC. The UIC members are designated in the personnel system by the Personnel Cabinet as “part-time” employees even though they are receiving a fixed salary. Part-time employees typically receive an hourly wage and are paid based on the hours worked. “Part-time” is defined by KRS 18A.005(23) as a “position, other than an interim position, requiring an employee to work less than one hundred (100) hours per month.” You have indicated that the members of the UIC work less than 100 hours per month. KRS 18A.005(18) defines “full-time” to mean:

a position, other than an interim position, requiring an employee to work at least thirty-seven and one-half (37.5) hours in a work week, except for the following:

- (a) Positions in the state parks, where the work assigned is dependent upon fluctuations in tourism, may be assigned work hours from twenty-five (25) hours per week during the off seasons and remain in full-time positions; and

- (b) Positions in health care facilities, which regularly involve three (3) consecutive days of twelve (12) hour shifts to cover weekends, shall be considered full-time;

KRS 11A.010(21) may include the term “benefit reserved for full-time employees”; however, this term is not an exclusive term because it appears after the “or” after “fixed compensation.” Therefore, this does not mean that the individuals in question must be designated as full-time employees by the Personnel Cabinet to be covered by this provision. Indeed, the purpose of including the phrase “benefit reserved for full-time employees” was to exist as an alternative to “fixed compensation.” Since the members of the UIC receive a fixed compensation, then it is not necessary to review your question as it relates to benefits reserved for full-time employees.

Third, the fixed compensation must be “paid on a regular basis without regard to the actual number of hours worked.” The members of the UIC work fewer than 100 hours per month and are paid the \$12,000 per year regardless of how many hours they actually work in any given month.

Pursuant to KRS 446.080:

- (1) All statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature, and the rule that statutes in derogation of the common law are to be strictly construed shall not apply to the statutes of this state.

- (4) All words and phrases shall be construed according to the common and approved usage of language, but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed according to such meaning.

The Commission, in reviewing KRS 11A.010(21) liberally to promote the objects of the statute and carry out the intent of the legislature as well as construing all words and phrases of the definition as a whole, determines that the members of the UIC are indeed receiving a fixed compensation, which is a salary, on a regular basis without regard to the number of hours worked. Therefore, the appointed members of the UIC are “officers” as defined in KRS 11A.010(7) and must abide by all provisions of the Ethics Code.

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: Christopher L. Thacker