



COMMONWEALTH OF KENTUCKY  
**EXECUTIVE BRANCH ETHICS COMMISSION**  
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KYLE M. WINSLOW

KATHRYN H. GABHART  
EXECUTIVE DIRECTOR

MICHAEL W. BOARD  
GENERAL COUNSEL

CAPITAL COMPLEX EAST  
1025 CAPITAL CENTER DRIVE, SUITE #104  
FRANKFORT, KY 40601  
(502) 564-7954  
FAX: (502)-695-5939

Executive Branch Ethics Commission  
**ADVISORY OPINION 19-06**  
July 16, 2019

**RE:** Are the Members of the State Board of Elections 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, in light of the recent changes in their compensation?

**DECISION:** Yes.

This matter was reviewed by the Executive Branch Ethics Commission (the "Commission") on its own initiative pursuant to KRS 11A.110(1). This opinion was issued at the July 16, 2019 meeting of the Commission, and the following opinion is issued pursuant to KRS 11A.110(1).

The State Board of Elections (“SBE”) is established by KRS 117.015 as an independent agency. The Commission is comprised of ten members: the Secretary of State serves as *ex officio*, non-voting member; the Governor appoints two (2) members who are former county clerks; the Governor appoints six (6) members from lists submitted by the political parties; and the Executive Director of the SBE who may only vote to break a tie for the selection of chair. KRS 117.015(9) provides that:

[t]he members of the board shall be paid a reasonable sum to be fixed by the secretary of the Personnel Cabinet, with the approval of the secretary of the Finance and Administration Cabinet, and in addition, their expenses in attending board meetings. The compensation shall be paid out of the State Treasury upon requisition signed by the chair of the board and approved by the secretary of the Finance and Administration Cabinet.

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For over two decades, the Secretary of the Personnel Cabinet has established the compensation for members of the SBE to begin with a starting salary of \$1000 per month, regardless of attendance at meetings, full health insurance, and retirement benefits. These members also received incremental raises that are given to all employees of the Executive Branch. In April of 2019, the Secretary of the Personnel Cabinet informed the members of the SBE that the retirement benefits were to be discontinued, which came to the attention of the Commission through news media reports in June.

The staff of the Commission requested the Personnel Cabinet provide more information concerning the changes in compensation of the SBE members for the purposes of drafting this opinion. The staff of the Personnel Cabinet indicated that the newly appointed former county clerk members will be compensated \$500 per month, regardless of attendance at meetings or proof of actual hours served. They will not be receiving health insurance or retirement benefits. The currently serving members will continue to receive the \$1000 plus monthly salary, regardless of meeting attendance or proof of actual hours served, for the remainder of their terms. The existing members will continue to receive health insurance and retirement benefits until the end of the year. Any newly appointed future members will receive \$500 per month, regardless of attendance at meetings or proof of actual hours served, and no other benefits.

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 (“the Ethics Code”). 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:

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

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(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.

The question before the Commission is whether the changes enacted by House Bill 81 would apply the definition of “officer” to the appointed members of the SBE. The Secretary of State and the Executive Director of the SBE 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 on the eight members of the SBE who are 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 SBE members are receiving a fixed compensation as determined by the Secretary of the Personnel Cabinet of either \$500 to more than \$1000 per month.

Second, salaried may also mean receiving “a benefit reserved for full-time employees.” The six politically appointed members are currently receiving health insurance and retirement benefits, which will be discontinued by the end of 2019. The SBE members are now designated in the personnel system by the Personnel Cabinet as “part-time” employees even though they are receiving a fixed salary and are not required to submit a timesheet as proof of their hours worked. Part-time employees typically receive an hourly wage, are required to submit a timesheet, 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.” The members of the SBE have argued that they work more than 100 hours per month and instructed the SBE Executive Director to write a letter to the Secretary of the Personnel Cabinet arguing for the continued compensation and benefits. According to the news media reports, the SBE members argued that they often answer emails, attend trainings, report to the political parties, and read materials related to SBE meetings. One member argued that the members of the SBE should be considered similar to constitutional officers because they do not submit timesheets and are considered to be on call 24 hours a day and seven days a week. As such, regardless of whether the SBE members’ fringe benefits will be discontinued, they will still be receiving a fixed income.

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 SBE receive a fixed compensation, then it is not necessary to review the 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 SBE are paid the \$500 to more than \$1000 per month regardless of how many hours they actually work in any given month and are not required to verify their hours. Therefore, they satisfy this provision.

Pursuant to KRS 446.080:

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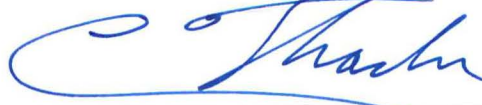
- (1) All statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature, and the rule that statutes in derogation of the common law are to be strictly construed shall not apply to the statutes of this state.

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- (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 SBE 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 SBE are “officers” as defined in KRS 11A.010(7) and must abide by all provisions of the Ethics Code.

**EXECUTIVE BRANCH ETHICS COMMISSION**



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By Chair: Christopher L. Thacker