



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION

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Executive Branch Ethics Commission
ADVISORY OPINION 22-01
January 19, 2022

RE: Are the Executive Orders in 2008-454 and 2020-423 enforceable by the Executive Branch Ethics Commission against the Members of the Kentucky Fish & Wildlife Commission?

DECISION: Only the Governor has the authority to enforce the Executive Orders that he issues.

This opinion is issued in response to your October 19, 2021 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the January 19, 2022 meeting of the Commission and the following opinion is issued pursuant to KRS 11A.110(1).

The Kentucky Fish & Wildlife Commission ("F&W Commission") is established by KRS 150.022 to "keep a watchful eye upon the Department of Fish & Wildlife Resources ..." as provided in KRS 150.023. F&W Commission members are appointed by the Governor and subject to Senate confirmation. See KRS 150.022(2). The members of the F&W Commission are private citizens.

On behalf of the League of Kentucky Sportsmen, you ask the following question of the Commission:

With the Kentucky Department of Fish and Wildlife Commission not listed as "Officer" in KRS 1JA.010 (7) (b) and the KDFWR Commission being subject only to Executive Order 2008-454, its amendment, Executive Order 2009-882, and Executive Order 2020-423 and the Governor not conferring any authority on the Commission in this regard and without statutory authority granted by the

legislature, are the executive orders enforceable by the Executive Branch Ethics Commission?

The Ethics Commission has never determined that the members of the F&W Commission are "public servants" as defined in KRS 11A.010(9) or "officers" as defined in KRS 11A.010(7).

KRS 11A.010 provides the following definitions:

- (7) "Officer" means:
- (a) 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, executive assistants, policy advisors, special assistants, administrative coordinators, executive advisors, staff assistants, and division directors;
 - (b) Members and full-time chief administrative officers of:
 - 1. The Parole Board;
 - 2. Office of Claims and Appeals;
 - 3. Board of Tax Appeals;
 - 4. Board of Claims;
 - 5. Crime Victims Compensation Board;
 - 6. Kentucky Retirement Systems board of trustees;
 - 7. Kentucky Teachers' Retirement System board of trustees;
 - 8. The Kentucky Public Employees Deferred Compensation Authority board of trustees;
 - 9. Public Service Commission;
 - 10. Worker's Compensation Board and its administrative law judges;
 - 11. The Kentucky Occupational Safety and Health Review Commission;
 - 12. The Kentucky Board of Education;
 - 13. The Council on Postsecondary Education;
 - 14. County Employees Retirement System board of trustees;
 - 15. Kentucky Public Pensions Authority; and
 - 16. The Kentucky Horse Racing Commission;
 - (c) Salaried members of executive branch boards and commissions; and
 - (d) Any person who, through a personal service contract or any other contractual employment arrangement with an agency, performs on a full-time, nonseasonal basis a function of any major management position listed in this subsection;
- (9) "Public servant" means:
- (a) The Governor;
 - (b) The Lieutenant Governor;
 - (c) The Secretary of State;

- (d) The Attorney General;
- (e) The Treasurer;
- (f) The Commissioner of Agriculture;
- (g) The Auditor of Public Accounts;
- (h) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees; and
- (i) Any person who, through any contractual arrangement with an agency, is employed to perform a function of a position within an executive branch agency on a full-time, nonseasonal basis.

Since the F&W Commission is not listed in KRS 11A.010(7)(b), the members are not considered to be "officers." Further, since the members of the F&W Commission are not "employees in the executive branch" or "officers," then they cannot be considered "public servants" as defined in KRS 11A.010(9). As such, the members of the F&W Commission are not covered by the dictates of KRS Chapter 11A.

In 2008, Governor Steve Beshear issued Executive Order 2008-454, pursuant to the authority vested to him in Sections 69, 79, and 81 of the Kentucky Constitution and KRS 12.080. Sections 6, 7 and 8 of Executive Order 2008-454 provided three ethical provisions to members of state policy-making and regulatory boards and commissions and provided a list of all policy-making and regulatory boards or commissions that were to be covered by the Executive Order. The F&W Commission was listed in number 27 of the attachment to Executive Order 2008-454. Governor Matthew Bevin rescinded certain provisions of Executive Order 2008-454 through Executive Order 2016-377, but left intact Sections 6, 7, and 8 of the original Executive Order. In 2020, Governor Andy Beshear reinstated certain provisions of Executive Order 2008-454 while also leaving intact Sections 6, 7, and 8 through Executive Order 2020-423.

Pursuant to Kentucky Constitution 69, the executive power is vested in the Governor: "The supreme executive power of the Commonwealth shall be vested in a Chief Magistrate, who shall be styled the "Governor of the Commonwealth of Kentucky." The Governor has the powers to issue executive orders. Pursuant to KRS 12.080:

the Governor, with the approval of his executive cabinet, may prescribe such general rules for the conduct of the administrative departments as he deems necessary or expedient to give effect to the provisions of law relating to the administrative organization of state agencies. The head of each department may likewise prescribe such rules as he deems expedient for the proper conduct of the work of the department and for making effective the provisions of law, and not inconsistent therewith or with the general rules prescribed by the Governor.

Only the Governor has the power and authority to enforce his executive orders. Since 2008, the Commission has investigated referrals of possible violations of Executive Order 2008-454 and

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referred the results of those investigations to the Governor. However, the Governor must decide how to properly enforce the Executive Orders he issues.

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By Chair: Judge Roger L. Crittenden (Ret.)

ATTACHMENTS: