



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION

JUDGE ROGER L. CRITTENDEN (RET.)
CHAIR

SEN. DAVID K. KAREM (RET.)
VICE CHAIR

CRIT LUALLEN
JUSTICE DANIEL J. VENTERS (RET.)
DAVID S. SAMFORD

CAPITAL COMPLEX EAST
1025 CAPITAL CENTER DRIVE, SUITE #104
FRANKFORT, KY 40601
(502) 564-7954
FAX: (502)-695-5939
[HTTPS://ETHICS.KY.GOV/](https://ethics.ky.gov/)

SUSAN STOKLEY CLARY
EXECUTIVE DIRECTOR

STEVEN T. PULLIAM
GENERAL COUNSEL

SUCHETA MEENA MOHANTY
DEPUTY GENERAL COUNSEL

Executive Branch Ethics Commission
ADVISORY OPINION 22-05
July 20, 2022

RE: In addition to the penalties set out in KRS 11A.100, may the salary of a merit employee be held, pursuant to KRS 11A.990(2), for his failure to timely file Statements of Financial Disclosure required of him as a former officer?

DECISION: Yes, a public servant's salary may be held for failure to timely file statutorily required Statements of Financial Disclosure.

This opinion is issued by the Executive Branch Ethics Commission (Ethics Commission) in response to the request of a former officer and Board Member of the Kentucky Public Pension Authority for an advisory opinion as to whether his current salary as a merit employee of the Department of Revenue may be held, pursuant to KRS 11A.990(2), for his failure to timely file Statements of Financial Disclosure statutorily required of officers and former officers. This matter was reviewed at the Commission's July 20, 2022, meeting and the following opinion is issued pursuant to KRS 11A.110(1).

KRS 11A.990(2) provides as follows:

“(2) Any officer, public servant, or candidate required to file a statement of financial disclosure under KRS 11A.050 who does not file the statement by a date specified in that section shall have his salary withheld from the first day of noncompliance until he shall have completed the act required by law. The amount withheld shall be deducted from his overall pay and allowances and shall be recoverable upon the filing of the statement of financial disclosure for good cause shown.”

It is undisputed that the public servant in question was an officer, as specifically defined by KRS 11A.010(7)(b), when he served as a Member of the Board of the Kentucky Public Pension Authority. It is undisputed that as an officer of the Commonwealth of

Kentucky he was statutorily required to file a Statement of Financial Disclosure both on an annual basis and within 30 days of leaving his position with the Board. KRS 11A.050(1), 9 KAR 1:010. It is undisputed that in addition to the process and penalties contained in KRS 11A.100, KRS 11A.990(2) requires that the salary of an officer, public servant or candidate be held for failure to timely file statutorily required Statements of Financial Disclosure.

The question that the Ethics Commission is addressing through this opinion is whether a former officer who leaves a non-paying Board position may have his salary as a merit employee held for his failure to timely file the requisite Statements of Financial Disclosure. As he was and continues to be a public servant, his salary may be so held.

There is no question that the public servant in question did not timely meet his duties under KRS 11A.050(1) and 9 KAR 1:010. He failed to timely file his 2021 "Annual" Disclosure, which was due on April 15, 2022; and upon leaving as a member of the Board of the Kentucky Public Pension Authority, he failed to timely file his "Leaver" Disclosure, which was due within 30 days of his resignation therefrom. Despite numerous phone calls, communications and emails with Commission staff about filing, said forms were not tendered or filed until July 8, 2022, over 80 days after their due date and after his request for this opinion.

The question remains as to whether the Commission may act to hold a public servant's current salary as a merit employee for such non-compliance, when his former officer position was not a merit or a salaried position.

KRS 11A.080(1)(a) permits the Commission to investigate and charge violations of the Ethics Code contained in KRS Chapter 11A. KRS 11A.100 then provides the procedure and remedies the Commission is to employ in adjudicating such matters. Clearly, failure to timely file statutorily required Statements of Financial Disclosure can be prosecuted under these provisions.

However, KRS 11A.990(2) provides as an additional penalty for such conduct, the withholding of the public servant's salary. For such failure to file, the statute requires the withholding of the salary of an officer, public servant or candidate from the first day of noncompliance until he has completed the action required by law; no distinction is made between officer and non-officer status nor the merit or non-merit status of the public servant. KRS 11A.050 and 9 KAR 1:010 place statutory duties on public servants even after their service as officers and are applicable "whether or not he or she remains an officer." KRS 11A.990(2) requires this Commission to enforce penalties for violation thereof. To hold otherwise would allow a public servant to evade the requirements of the law.

EXECUTIVE BRANCH ETHICS COMMISSION


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