



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) 696-5091  
[HTTPS://ETHICS.KY.GOV/](https://ethics.ky.gov/)

SUSAN STOKLEY CLARY  
EXECUTIVE DIRECTOR

SUCHETA MEENA MOHANTY  
GENERAL COUNSEL

EDEN DAVIS STEPHENS  
DEPUTY GENERAL COUNSEL

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 24-03**

May 15, 2024

**RE:** Are the provisions of the Executive Branch Code of Ethics contained in KRS Chapter 11A, including the requirement of filing a Statement of Financial Disclosure, pursuant to KRS 11A.050, still applicable to Commonwealth's Attorneys?

**DECISION:** YES, while the Prosecutor's Advisory Council has adopted a code of ethics for the unified prosecutorial system, such does not modify the obligations of Commonwealth's Attorneys and their staff under KRS 11A.

This opinion is issued in response to a request from the Commonwealth's Attorney of the 16<sup>th</sup> Judicial Circuit for exemption from filing a Statement of Financial Disclosure, as directed pursuant to KRS 11A.050. Three other Commonwealth's Attorneys, from the 7<sup>th</sup>, 27<sup>th</sup>, and 34<sup>th</sup> Judicial Circuits, filed requests in like manner and were also granted extensions for the filing of their Statements of Financial Disclosure until the effective date of this Advisory Opinion. This matter was reviewed at the May 15, 2024, meeting of the Commission and the following Opinion is issued.

Following the BOPROT scandal in the early 1990's involving both the legislative and executive branches of government, the Executive Branch Code of Ethics and the Kentucky Code of Legislative Ethics were created by the Legislature to ensure ethical conduct in state government. KRS 11A.001 and KRS 6.601. Self-regulation by these two branches was determined by the Legislature to have been insufficient and ineffective. The Legislature continued to create a statewide system of independent ethics commissions by mandating that the governing body of each city, county, urban-county, consolidated local government and charter county adopt by ordinance a code of ethics applicable to their elected officials-including county attorneys-and to their employees. KRS 65.003. Under this legislative plan,

all prosecutors and all other public servants were made subject to the provisions of a city, a county, or a state ethics code.

In Ky. Exec. Branch Ethics Comm'n Op. No. 06-3 (April 10, 2006), *rev'g* Ky. Exec. Branch Ethics Comm'n Op. No. 93-7, the Executive Branch Ethics Commission ("Commission") addressed the issue of whether Commonwealth's Attorneys were subject to the provisions of KRS Chapter 11A and stated as follows:

"The Commonwealth's attorney program is made up of 57 elected Commonwealth's attorneys and their staffs. Commonwealth's attorneys and their staffs are employees of the Unified Prosecutorial System ("UPS"), as are county attorneys and their staffs. Pursuant to KRS 15.700, which established the UPS in order to "maintain uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the Commonwealth," the Attorney General is the chief prosecutor of the Commonwealth. The Prosecutor's Advisory Council ("PAC") was established in KRS 15.705 to administer the UPS and is administratively attached to the Office of the Attorney General ("OAG"). The Attorney General, by statute is chairman of the PAC, which is responsible for, but not limited to, the preparation of the budget of the UPS as well as its continuing legal education and program development. ...The compensation of each Commonwealth's attorney and his staff is paid out of the State Treasury pursuant to KRS 15.755. Unlike county attorneys, who act as legal advisers to the county in which they serve as well as criminal prosecutors under the UPS, the Commonwealth's attorneys serve in their official capacities within their judicial circuits as criminal prosecutors only, so they have no duties outside of those that fall within the mission of the UPS. ...Thus, it does not appear that the Commonwealth's attorneys are elected officials of a "city" or "county", but rather are elected officials of the "state," within the executive branch."

The Commission continued by noting that while KRS 15.733 provided guidance for Commonwealth's Attorneys as to when disqualification from prosecuting a case is necessary based on conflict of interest and complemented the provisions of KRS Chapter 11A, it "does not cover the many other possible conflicts of interest, and other ethical concerns, that may exist for Commonwealth's attorneys and their staffs." Further, the Commission held that KRS 15.733 did not apply to employees of the Commonwealth's Attorney.

Again, on January 19, 2022, in Ky. Exec. Branch Ethics Comm'n Op. No. 22-3, the Commission addressed the issue of whether Commonwealth's Attorneys and their employees were subject to the provisions of KRS Chapter 11A and answered the question with a resounding yes. Advisory Opinion 22-3 detailed the history behind the question and the statutory and case law support for the Commission's conclusion that Commonwealth's Attorneys and their staff are subject to KRS 11A. Pointing out that KRS 15.755 provides that Commonwealth's Attorneys and their staffs are paid out of the state treasury and are not listed as county employees in KRS 65.003, the Commission found that Commonwealth Attorneys, like Property Valuation Administrators (PVAs), are elected state employees within the executive branch of government and are subject to the provisions of the Executive Branch Code of Ethics.

We now reach the question posed as to whether the Executive Branch Code of Ethics in KRS Chapter 11A continues to be applicable to duly elected Commonwealth's Attorneys and to their employees.

On Friday, February 16, 2024, an EBEC staff member received an email from the Commonwealth's Attorney, 16<sup>th</sup> Judicial Circuit, advising that he was exempt from filing a Statement of Financial Disclosure and from the requirements of KRS Chapter 11A. While all duly elected Commonwealth's Attorneys had previously complied with the mandates of KRS 11A.050 and with the reporting requirements of the Kentucky Registry of Election Finance for 2022, the requestor advised staff that pursuant to KRS 15.705(4)(a)(3), effective July 14, 2022, the Prosecutor's Advisory Council (PAC) was now responsible for "(p)roposing and adopting a code of ethics for prosecutors within the unified prosecutorial system." He further advised that he was subject to the Code of Ethics adopted by PAC and exempt from KRS Chapter 11A. A copy of the referenced Code of Ethics prepared by PAC was not available online, was requested by staff, and was received.

The requestor posits that language in KRS 15.705 authorizing PAC to propose and adopt a code of ethics and the subsequent adoption of a code by PAC prosecutors places him outside the mandates of the ethics provisions of KRS 11A. Such is not the case. As was noted in Advisory Opinions 06-3 and 22-3, when discussing the interplay between KRS 11A and KRS 15.733, each operates side by side and each complements the other. Since the Code adopted by the Council is aspirational and has not been legislatively approved, it does not contain an authorized enforcement process for ethical violations and abuse of state resources - Subsection (2)(e) even states:

"This Code of Ethics is not intended to modify a prosecutor's obligations under applicable rules, statutes, or the Constitution, and to the extent there may be a conflict, the applicable rule, statute, or Constitution shall take priority."

In Exec. Branch Ethics Comm'n Op. No. 98-22 (May 19, 1998), the Commission addressed a similar issue when the Kentucky Higher Education Student Loan Corporation ("KHESLC") sought to develop an internal code of ethics for its employees and board members. The Commission commended KHESLC's efforts to develop an internal code of ethics but found the employees to also be subject to the Executive Branch Code of Ethics. While other professional and governmental ethics codes may also be binding upon Commonwealth's Attorneys, such as the Kentucky Rules of Professional Conduct, the Executive Branch Code of Ethics remains applicable to Commonwealth's Attorneys and their employees.

KRS 11A.015 permits exemption from the Executive Branch Code of Ethics only as follows:

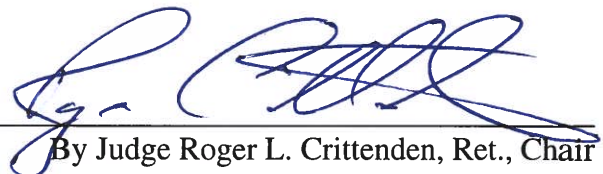
"An agency that is directed by statute to adopt a code of ethics shall be exempt from KRS Chapter 11A **upon the effective date of an Act of the General Assembly creating the agency's code of ethics** or **upon the effective date of an administrative regulation that creates the agency's code of ethics.**" (Emphasis added).

By enacting KRS 15.705, the legislature permitted PAC to adopt an internal code of ethics for prosecutors, but it did not take the additional step of creating the code, nor did it authorize the code to operate in lieu of the Executive Branch Code of Ethics. The Executive Branch Code of Ethics has legislatively authorized provisions for its enforcement and penalty provisions for its violation. It has been legislatively approved and is available to and accessible by the public. The code adopted by PAC has not been legislatively approved pursuant to the requirements of KRS 11A.015 and therefore does not meet the requirements for exemption from KRS Chapter 11A. In KRS 16.080(1) the Legislature authorized the Commissioner of the State Police to “promulgate administrative regulations for the enlistment, training, code of ethics, discipline, and conduct of the department”... and then later approved and adopted 502 KAR 5:020, et seq., which contained the code of ethics and the process for enforcement thereof. Such is the proper course for exemption from the Executive Branch Code of Ethics.

As public servants, the protection of the public and accountability are paramount. To ensure the ethical conduct of all executive branch employees, the Executive Branch Code of Ethics was made applicable to all officers and public servants serving in the executive branch. Commonwealth’s Attorneys serve at the highest level of public service and “seek to foster high professional standards of conduct for all prosecutors and the recognition thereof by the general public”. Ky. Commonwealth’s Attorneys’ Ass’n Const. Art. 1, §3, Cl.e (August 25, 2022). They are full time elected state officers subject to the Executive Branch Code of Ethics and their employees are public servants also subject to the ethical requirements of that Code.

As this Advisory Opinion is issued in response to the requests of Commonwealth’s Attorneys from the 16<sup>th</sup>, 7<sup>th</sup>, 27<sup>th</sup>, and 34<sup>th</sup> Circuits, the Commission hereby grants an extension of time for the filing of their Statements of Financial Disclosure and will defer enforcement of the penalty provisions of KRS 11A.990(2) to and including May 31, 2024.

**EXECUTIVE BRANCH ETHICS COMMISSION**

  
By Judge Roger L. Crittenden, Ret., Chair