

**COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION**



**GUIDE TO THE
EXECUTIVE BRANCH
CODE OF ETHICS**

**For All Executive Branch Public Servants,
Including Merit and Non-Merit Employees, Officers, and
Members of Certain Boards and Commissions**

**June 2019
11th Edition**

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This Guide provides general information only. The statements contained in it do not have the force and effect of law. Amendments to the ethics laws, regulations, and advisory opinions may modify or supersede any or all statements in this Guide.

For more information, employees should contact the Executive Branch Ethics Commission or refer to the current edition of the **Kentucky Revised Statutes, Chapter 11A**, and **Kentucky Administrative Regulations, Title 9** (provided online at <http://ethics.ky.gov>).

Anyone wishing for further guidance may request an advisory opinion by submitting a written request at least two weeks before the next scheduled Commission meeting or may contact the Commission's staff by phone at any time.

**You may reproduce this Guide in whole
or in part for use by your agency.**

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INTRODUCTION

This Guide contains references to and explains the ethics laws contained in Kentucky Revised Statutes (KRS) Chapter 11A, referred to as the Ethics Code. The citizens of the Commonwealth have a right to expect honesty from public servants and have confidence in their government. The Ethics Code sets minimum standards of ethical behavior for public servants. However, as public servants, our goal should be to provide the public with the highest ethical standards of public service.

This publication does not replace the actual law, nor does it explain all of the ethical requirements of the Ethics Code or the statutes to which you are subject. Additionally, the laws contained in KRS Chapter 11A may not provide guidance for all situations that you may encounter. If you have questions concerning a matter that is unclear or is not addressed in this Guide, you may contact the staff of the Executive Branch Ethics Commission at (502) 564-7954 for guidance, or review the Commission's website at: <https://ethics.ky.gov>.

WHO IS COVERED BY THE ETHICS CODE:

All state officers and employees in the executive branch of state government are subject to the Ethics Code unless otherwise provided by law. Members of certain Board and Commissions are also covered by the full Ethics Code. The Ethics Code refers to these employees as "Public Servants."

WHO IS A PUBLIC SERVANT?

YOU ARE! EVERY EMPLOYEE OF EVERY EXECUTIVE BRANCH AGENCY IS A PUBLIC SERVANT COVERED BY THE ETHICS CODE unless under a separate statutory code of ethics. **YOU ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH THESE LAWS.**

Some of the provisions of the Ethics Code *only* apply to officers.

WHO IS AN OFFICER?

- Constitutional Officers
- “Major Management” Personnel [This term is not defined by statute, but guidance was provided in Advisory Opinion 17-05]
- Property Valuation Administrators
- Specifically Named Positions:
 - Cabinet Secretaries and Deputy Secretaries
 - General Counsels
 - Commissioners and Deputy Commissioners
 - Executive Directors
 - Executive Assistants
 - Policy Advisors
 - Special Assistants
 - Administrative Coordinators
 - Executive Advisors
 - Staff Assistants
 - Division Directors

CONTRACT EMPLOYEES: Anyone holding a position by contract that would otherwise be considered a full-time position for any of the above positions is also considered an “officer.”

CERTAIN MEMBERS OF BOARDS AND COMMISSIONS: Members of the following are considered to be officers: the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems Board of Directors, Kentucky Teachers’ Retirement System Board of Trustees, Public Service Commission, Worker’s Compensation Board and its administrative law judges, the Kentucky Occupational Safety and Health Review Commission, the Kentucky Board of Education and the Council on Postsecondary Education and members of salaried boards and commissions.
Source: KRS 11A.010(7) and (9) and Advisory Opinion 17-05.

EXECUTIVE BRANCH AGENCIES

Executive branch agencies are those state agencies which are headed directly or indirectly by the Governor or another statewide elected official to carry out the laws of the Commonwealth. Executive branch agencies include state offices, cabinets, departments, boards, commissions, public corporations and authorities. Thus, employees of such agencies are considered executive branch employees and must follow the Ethics Code.

Employees of an executive branch agency that is directed by statute to adopt a code of ethics, and has through statute or regulation adopted its own ethics code, are exempt from the Executive Branch Code of Ethics.

Each executive branch agency may implement its own, more restrictive guidelines to be followed by its employees to supplement the Ethics Code. Therefore, please be sure to review the state employee handbook as well as your agency's own policies in addition to reviewing this guide.

YOUR AGENCY IS YOUR CABINET UNLESS YOU WORK FOR AN INDEPENDENT ENTITY

You , as a public servant, are employed by the agency by which your appointing authority is employed, unless your agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department. Any time the Ethics Code mentions the term "agency," it means your cabinet-level for your individual branch, division, department, board, or commission, unless your entity is independent.

Source: KRS 11A.010(7), KRS 11A.015, and Advisory Opinion 95-4

EXECUTIVE BRANCH ETHICS COMMISSION

The Executive Branch Ethics Commission is composed of five members appointed by the Governor to serve staggered terms of four years. The Commission is responsible for providing guidance, issuing advisory opinions, and investigating potential violations of KRS Chapter 11A.

The Commission meets every other month. Meetings are open to the public. Investigatory matters are discussed in executive sessions, which by law are not open to the public. The Commission staff is available to provide guidance and advice. The Commission seeks to fulfill its mission through:

- Administering a program of training and education on the application of the Ethics Code;
- Providing guidance to executive branch employees concerning their ethical conduct;
- Enforcing the provisions of the Ethics Code;
- Interpreting the Ethics Code through the issuance of information advice and formal advisory opinions;
- Registering executive agency lobbyists; and
- Recommending legislation to the General Assembly.

The office of the Commission reviews and houses records for public inspection, including:

- Statements of Financial Disclosure;
- Executive Agency Lobbyist Registration Statements;
- Gift disclosure statements; and
- Records relating to administrative proceedings.

Source: KRS 11A.060, 11A.030(5), 11A.045(1), 11A.040(5), and 11A.110(1)

GENERAL STANDARDS OF CONDUCT

It is the public policy of the Commonwealth that a public servant works for the benefit of the people of the Commonwealth. The Executive Branch Code of Ethics recognizes that public office is a public trust where government is based upon the consent of its citizens. Those citizens are entitled to have complete confidence in the integrity of their government. Thus, the following provisions provide general statements of required behavior for you as an executive branch employees:

- You must be independent and impartial;
- You must not make decisions and policies outside the established processes of government;
- You should not use public office to obtain private benefits for yourself or others;
- Your actions should promote public confidence in the integrity of government;
- You should not engage or be involved in any activity which has the potential to become a conflict of interest with your state employment.

Source: KRS 11A.005

CONFLICTS OF INTEREST

YOU, AS A PUBLIC SERVANT, MUST . . .

- ✓ Avoid all conduct which might in any way lead members of the general public to conclude that you are using your official position to further your professional or private interest when appearing before a state agency; AND
- ✓ Disclose in writing to your superior the fact that you have abstained from action on an official decision in which you have or may have a personal or private interest.

Your superior shall then cause the decision on these matters to be made by an impartial third party.

Source: KRS 11A.020(2)-(4)

WHEN SHOULD YOU ABSTAIN FROM A DECISION?

To help you determine if you should abstain from action on an official decision, ask yourself these questions:

- ✓ Has your personal or private interest created a substantial threat to your independence of judgment?
- ✓ Will your participation have an effect on public confidence in the integrity of the executive branch?
- ✓ Is your participation likely to have any significant effect on the disposition of the matter?
- ✓ Will the official decision affect you in a manner differently from the public?

If you answered yes to any of these questions, you should abstain.

- ✓ Is there a need for your particular contribution, such as special knowledge of the subject matter, for the executive branch to function effectively?

If you answered yes to this question, you may be able to avoid abstaining.

Source: KRS 11A.020(1)(a), KRS 11A.020(3), and KRS 11A.030

WHEN IN DOUBT . . . ASK BEFORE YOU ACT!

When you don't know whether you should abstain from an official action, make an inquiry to the staff of the Executive Branch Ethics Commission. We can provide guidance verbally over the phone or in writing. We can also guide you to already established advisory opinions or assist you in the process of getting a formal advisory opinion from the Commission. *It is better to be safe than sorry.*

<i>Examples</i>

You are employed as an auditor for the state agency responsible for auditing county governments. As such, you are involved in the annual audit of various counties, including the one in which you live. You have been asked to serve on an “ethics board” for the county in which you live. You will be paid a certain amount per diem for your services. You may not serve on a board and receive compensation from the county which is regulated by the agency for which you work.

Field representatives for the Office of the Governor should not send employment recommendations to state agencies based strictly on the applicant's political involvement with no direct knowledge of the applicant's qualifications or capabilities.

Your spouse owns a business that is inspected and/or regulated by the division for which you work. You must NOT inspect your spouse's business or any business in competition with your spouse. In addition, you should not work in the same division as persons inspecting your spouse's business.

An employee or agency may not accept travel expense reimbursement from the self-described "philanthropic arm" of an agency with which they do business.

The Deputy Secretary of a Cabinet cannot call subordinate employees and attempt to solicit campaign contributions from them, based on their salary, for the re-election of a constitutional officer.

An employee of the state agency cannot use his official credentials as a law enforcement officer to falsely claim he was involved in an undercover investigation to gain entry into a bar for his 15 year old daughter and order drinks for her.

A supervisor should not engage in a sexual relationship with a subordinate and then conduct the subordinate's evaluations or otherwise make decisions about the subordinate.

Advisory Opinions: 93-12, 93-18, 93-26, 93-37, 94-15, 03-8, 12-02, 12-03, and 12-04

Administrative Proceedings: 11-012, 12-009, and 17-006

PROHIBITED CONDUCT: USING INFLUENCE & ABUSING OFFICIAL POSITION

If you violate the following provisions, you could be subject to civil penalties that are detailed at the end of this Guide.

YOU, AS A PUBLIC SERVANT, SHALL NOT . . .

- Ø Use or attempt to use your influence in any matter which involves a substantial conflict between your personal or private interest and your duties in the public interest;
- Ø Use or attempt to use any means to influence a public agency in derogation of the state at large;
- Ø Use your official position or office to obtain financial gain for yourself or any members of your family; OR
- Ø Use or attempt to use your official position to secure or create privileges, exemptions, advantages, or treatment for yourself or others in derogation of the public interest at large.

Source: KRS 11A.020(1)(a)-(d)

9 KAR 1:025 provides examples in which a public servant could be considered in violation of the statute above:

- A public servant participates directly or uses his or her position to influence a decision within his or her agency concerning any matter involving the public servant's family member or a person with which the public servant has a close, personal relationship.
- A public servant uses state time, equipment, personnel, facilities, or other state resources for (1) private, for-profit, business purposes, (2) political campaign purposes, or (3) sexual interests.
- A public servant solicits, sells to, or otherwise engages in a financial transaction with an immediate subordinate, a person the employee directly supervises, or a person or business that is doing business with or is regulated by his or her state agency, **IF** the economic benefit to the public servant is greater than \$100 in a single calendar year.

ENDORSEMENTS

ACTIVE ENDORSEMENTS PROHIBITED:

State agencies and employees, acting as representatives of their respective agencies, should take great care not to appear that they are endorsing or promoting a specific product or company if that entity is regulated by or doing business with their agency. You and your agency should not actively endorse or promote a company when no corresponding public benefit to the citizens of the Commonwealth, or to the state's economic development, will occur. You or your agency should not make statements that could be active endorsements of that service or product, such as statements indicating the product or service is better than other products or services or statements prejudging a future business relationship.

PASSIVE ENDORSEMENTS ACCEPTABLE:

Any information you provide to individuals outside of your agency concerning a vendor of your agency should be limited to verifying the existence of a contract, the facts of the performance of services or the receipt of a product, and whether or not the product or performance is satisfying the scope of the contract or agreement.

Public and private partnerships may be allowed when the purpose of collaborating is to promote a state program that will benefit the entire Commonwealth or will promote economic development or tourism in the state. Such partnering should be open to any company interested in partnering.

Source: KRS 11A.020(1)(d) and KRS 45A.096 and 45A.097

Examples

The Attorney General may provide a statement reflecting his views in an educational book on consumer scams related to the mission of

the Office of the Attorney General, provided the statement does not appear to be promoting the sale of the book.

The Kentucky State Police may not allow Ford Motor Company to use the state police insignia on a sport utility vehicle ("SUV") display model for use in promoting the use of SUVs by law enforcement agencies.

Materials distributed by private companies which are merely brochures advertising a state program and do not identify the private company, other than to state "printed by" and the company's name, are permitted.

An Agriculture Marketing Supervisor over the Department of Agriculture's Organic Program may not use his state email and Department letterhead to endorse a private company to provide organic certification inspections to out-of-state organic product producers after the Department decides to no longer offer such services.

Advisory Opinions: 00-18, 00-24, and 02-21

*Administrative Proceedings: 12-006**

PREFERENTIAL TREATMENT OF FAMILY MEMBERS

A family member of a public servant is not prohibited from employment in the same state agency as the public servant. Indeed, family members may work side-by-side. However, you may not advocate or influence in any way the employment, appointment, promotion, transfer, or advancement of a member of the your family to an executive branch position of employment that the you directly supervise or manage. A public servant who uses his or her position to ensure that a family member receives a job, a promotion, a pay raise, or any form of preferential treatment could be in violation of the Ethics Code.

“Family” includes: spouse, children, parents, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. See KRS 11A.010(4).

Specifically, you may not interview, recommend, or approve your family members for positions within your employing agency. You should not directly supervise a family member, evaluate a family member’s job performance, or participate in an action relating to the discipline of a member of your family. A public servant who participates in such conduct has an obvious and perceived conflict of interest and should abstain from any such activities.

Source: KRS 11A.020(1)(a), (b), and (d), KRS 11A.020(3), KRS 11A.030, and 9 KAR 1:025

Examples

The public servant may not hire her son for summer employment in her office over which she manages.

An elected public servant may not hire his daughter to work for him and ultimately promote her to manage his local office.

The brother-in-law of a public servant who works in the office of the Governor seeks employment with the public servant’s Cabinet. The public servant should not recommend to the Cabinet’s officials that the brother-in-law be employed by the Cabinet.

A public servant is hired to manage a state park in a rural county. Many of the public servant’s family members already work at the state park. The public servant should not supervise or evaluate other park employees who are her family members. The public servant should ensure that there are intervening layers of supervision between her and her family members, and she should not partake in

evaluations or making discretionary decisions about the employment or salaries of her family members.

Advisory Opinions: 04-34 and 07-19

Administrative Proceedings: 08-022

ABUSE OF STATE TIME AND RESOURCES

You are prohibited from abusing state time as well as resources that you are provided through your employment, such as vehicles, office space, office equipment, cell phones, and email addresses. Oftentimes, this abuse happens in a minor capacity, but other times employees are found to have grossly overused their state provided resources and work time to conduct personal and private business for profit. Public confidence in the Executive Branch is destroyed when these abuses come to light. All of us as public servants must be mindful not to abuse state resources in their everyday activities and to conserve such resources.

Public servants who actively participate in such conduct are using their official positions for potential private gain and should discontinue such activities.

Source: KRS 11A.020(c) and (d)

Examples

An officer traveling to an approved out-of-state conference should not book a more expensive flight in order to travel to an additional location to combine business with pleasure.

An inspector should not falsify reports and timesheets to reflect that he has performed inspections that he has not actually performed.

A public servant should not use her state-issued email address, cell phone, office space, and sick leave to run a private business on state time, even if she is getting her state work completed on time.

A Staff Attorney with a Cabinet cannot claim regular working hours on his timesheet when he arrives between nineteen minutes and five hours late on 54 work days, resulting in the employee being paid for twenty-one hours of time he was not at work or performing work related activities.

A public servant may not use a state-issued credit card to purchase fuel for his personal vehicle.

A public servant may not use a state database or software program for personal use or for use with a private, for-profit business.

An agency head cannot use his position to have Department employees perform personal work for him on state time using state equipment. This includes pumping out the flooded basement of his personal residence; picking up building materials for his personal use; cleaning his house; remodeling his house; or building a basketball court in his backyard.

Administrative Proceedings: 03-103, 09-001, 9-002, 9-003, 10-004, 11-002, 11-005, 11-008, 12-004, 12-005, 13-001, 14-003, 15-007, 18-009, and 18-017

PROHIBITED CONDUCT: DISCLOSING INFORMATION & SELF-DEALING

If you violate the following provisions, you could be subject to civil penalties AND potential criminal penalties, including prosecution for a Class D Felony, that results in a 1 to 5 year prison sentence.

AS A PUBLIC SERVANT, YOU SHALL NOT KNOWINGLY...

- Ø Disclose or use confidential information acquired in the course of your official duties, when to do so would further your own economic interests.
- Ø Receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in your hands or to be raised through any state agency.
- Ø Act as a representative or agent for the Commonwealth or any agency in the transaction of any business or regulatory action with yourself, or any business in which you or a member of your family has any interest greater than 5% of the total value thereof.
- Ø Hold, bid on, negotiate or enjoy, in whole or in part, any contract, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which you are employed.
- Ø Accept compensation, other than that provided by law for public servants, for performance of your official duties without the prior approval of the Ethics Commission.

Source: KRS 11A.040(1)-(5)

Examples

A public servant becomes aware of confidential bond information, which she thinks would help her personal investments. She may not use the information obtained through her state position for her own personal advantage.

A public servant may not use a bank account she manages as part of her state employment to write checks to “cash” for her personal use.

A bridge inspector may not take copies of preliminary memos that he drafted as part of his state employment to give to his family’s attorney to be used in litigation against his agency related to a land dispute.

Administrative Proceedings: 2011-003 and 2010-007

STOCK OWNERSHIP

You, your spouse, and your dependent children should not own an interest with a value of 5% or more of an entity that does business with your state agency or is regulated by your agency, unless:

1. The stock or other interest is purchased exclusively through participation in a publicly traded mutual fund where the purchasing and selling decisions are completely out your or your spouse’s control; or
2. In your state employment, neither you nor anyone under your supervision is directly involved in any matters concerning the company or other entity of which you own an interest.

Source: KRS 11A.040(4)

Examples

The spouse of the director of the division responsible for telecommunications owns an interest of more than five percent in a communications company that does business with the division for which the director works. The director's spouse may retain an interest in the company up to a value of five percent, but must divest any interest he or she has in the company which is over five percent.

An employee of the department responsible for state computer systems owns \$20,000, but less than five percent, of stock in a computer company that sells products to the employee's department. As a part of his official duty, the employee is not directly involved in any matters concerning the company of which he owns an interest. He is not required to divest himself of any of his stock.

Advisory Opinion: 00-20

Administrative Proceeding: 08-008

REPRESENTATION OF THE COMMONWEALTH

You must not knowingly act as a representative of the state in the transaction of any business or regulatory matters with any business of which you or a member of your family owns more than 5%.

Source: KRS 11A.040(3), KRS 11A.010(4)

Examples

An agriculture inspector owns an egg business that he leases to a non-family member. As part of his state employment, the inspector inspects businesses that purchase eggs from his leased egg business. The

inspector, a representative of the state, is prohibited from inspecting businesses that purchase eggs from his leased egg business.

A public servant's husband owns a business that is inspected and regulated by the division for which she works. The public servant must not inspect her spouse's business or any business that is in competition with her spouse's business. In addition, the public servant should not work in the same division as inspectors of her spouse's business.

A Family Services Office Supervisor with a Cabinet cannot use her position to represent the Cabinet in negotiations to have a business owned by her husband provide promotional products for events held by her Department.

Advisory Opinions 93-26 and 94-15

Administrative Proceeding: 14-019

<p>CONTRACTS OR AGREEMENTS WITH THE COMMONWEALTH</p>

You, your spouse, or a business of which you or your spouse owns at least 5% interest, must not knowingly have any agreement or contract with your state agency. This includes contracts that are awarded through a competitive bid process and also grants that are awarded by state agencies.

This provision does not apply to agreements made pursuant to eminent domain, those involving funds disbursed through entitlement funds, sales of craft items to a state park by interim state employees designated as craft persons, or purchases from a state agency that are available on the same terms to the general public or that are made available at public auction.

In addition, all contracts and agreements between an employee and any other state agency besides the agency for which the

employee works must comply with the Model Procurement Code in KRS Chapter 45A.

Source: KRS 11A.040(4)

<i>Examples</i>

A public servant own a computer products company and wishes to sell his products to the state agency for which he works. The public servant is prohibited from selling any products to his own state agency, but may sell products to other state agencies.

A public servant's spouse owns and operates a catering business and wishes to cater a Christmas party for a state agency for which the public servant does not work. The public servant's spouse is not prohibited from providing the catering services, provided the spouse is in compliance with the Model Procurement Code.

A public servant is employed by the Department of Corrections as a dentist. The public servant may not provide services for a private professional service corporation that will fulfill a service the professional service corporation provides for the Department.

A Transportation Engineer Supervisor cannot conduct surveying activities for a company owned by his spouse on a project for the Transportation Cabinet. This would result in the employee benefiting from the contract between his spouse's company and the Cabinet.

A Director with a Cabinet cannot use her position to have her agency do business with a company owned by her husband, to provide catering for an event held by her Department. The Director may not use staff to create documentation to show that her husband's company was the lowest bidder, and she may not then use this documentation to represent to upper management that her husband's company is the only option to provide catering.

A public servant, who owns a private photography business, cannot provide such services to his own Cabinet, even if he used to provide those services to his Cabinet as a state employee, and he has permission to engage in outside employment.

Advisory Opinion 93-15, 96-38, 05-42, and 06-26

Administrative Proceeding: 10-001, 14-001, 14-008, and 19-012

HONORARIA

Without the approval of the Commission, you must not knowingly accept compensation, other than state salary, for performance of your official duties unless allowed by KRS 45A.097. However, an agency may be reimbursed for your time and travel attending an event to perform your official duties. You are permitted to accept compensation for providing a service, which is not a part of the official duty directed by your supervisor. Such service must be performed on your own time and without the use of state resources.

Source: KRS 11A.040(5) and KRS 45A.096 and 45A.097

Examples

The branch manager for the traffic safety division is asked to give a speech on hybrid tea roses to a garden club at night. The manager may accept the \$50 honorarium given by the garden club because the speech is not a part of the employee's official duty and is given on the employee's own time.

The Secretary of a Cabinet is asked to give a commencement address at a state university. Part of the Secretary's official duties involves speaking at commencement ceremonies. Thus, without the approval of the Commission, the Secretary may not accept the honorarium; however, his agency may be reimbursed for his time and expenses.

A Cabinet Secretary is asked to speak at a conference that is being held by an entity that is regulated by his agency. The entity offers to reimburse the Cabinet for the Secretary's travel expense. The Cabinet may accept the reimbursement, but the Secretary may not be paid directly.

Advisory Opinions 94-14, 96-33, and 04-41

GIFTS AND GRATUITIES

BASIC RULE: You, your spouse, or your dependent child shall not knowingly accept gifts or gratuities totaling a value greater than \$25 in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of your state agency, or from any group or association which has as its primary purpose the representation of such persons or businesses. Acceptance of such gifts may appear to be a conflict of interest and may damage public confidence. Moreover, their acceptance violates the Ethics Code!

GIFTS THAT **ARE PROHIBITED**:

- Ø Payments
- Ø Loans
- Ø Subscriptions
- Ø Advances
- Ø Travel Expenses
- Ø Deposits of money
- Ø Meals
- Ø Services
- Ø Anything of value, unless consideration of equal or greater value is received

GIFTS THAT **ARE PERMITTED**:

- ✓ From family members in their capacity as family members;
- ✓ From campaign contributors, so long as the donation complies with the Campaign Finance laws;
- ✓ Door prizes available to the public;
- ✓ Tickets for admission to sporting events **if** you pay face value for such tickets or admission;
- ✓ The waiver of a registration fee for a presenter at a conference training described in KRS 45A.097(5); or
- ✓ A gift or gratuity received by an employee working directly on an economic incentive package or seeking to bring

tourism to the state which was not solicited by the employee and was accepted in performance of the employee's official duty. Such gifts must be registered with the Commission and, if of a tangible value of more than \$25, must be turned over to the appropriate agency.

Nothing in these gifts provisions allows you to accept a bribe or an inducement to act in violation of KRS Chapter 521.

These gifts provisions do not apply to:

- ✓ Activities involving sponsorships, naming rights, or similar honoraria granted under KRS 45A.097; or
- ✓ Individuals traveling on their own while involved in activities related to KRS 45A.097.

What if you receive a gift that you should not accept according to these rules? You should, when practicable:

- Return the gift to the gift-giver, or
- Pay the gift-giver the market or face value of the gift.

When these options are not practicable, you should:

- Donate the gift to charity, or
- Destroy the gift.

Disposal should be documented in writing to your appointing authority and should be included in your personnel file.

The Commission may authorize other exceptions where an appearance of impropriety will not be created. Such requests for exceptions must be submitted to the Commission in writing two weeks before its next scheduled meeting to be considered.

Additionally, all gifts, even if allowable by the gifts rule, from a single source received by an elected official or officer as defined in KRS 11A.010(7) which exceed \$200 in value must be disclosed on the officer's Statement of Financial Disclosure filed annually with the Commission. *Source: KRS 11A.045, KRS 11A.050(3)(k), KRS 45A.096 and 45A.097*

Examples

A cabinet secretary cannot accept reimbursement for the costs of attending a program sponsored by a national association that represented entities regulated by the cabinet because the reimbursement for travel expenses in excess of \$25 in a calendar year may not be accepted from a business regulated by the Cabinet or from any group or association which has as its primary purpose the representation of those businesses, which may also be considered a prohibited source pursuant to KRS 45A.096(9).

An employee inspects a business for safety violations. He may not accept a \$30 gift certificate from the business.

The father of a public servant works for a consulting firm that seeks to do business with the public servant's Cabinet. The public servant may accept a gift from his father as long as his father is not acting for the consulting firm in the giving of the gift. Furthermore, the employee should not be involved in decision-making concerning the father's business.

A Christmas gift valued at \$50 is sent from a potential vendor to a state office. The gift should be returned to the potential vendor, if possible. Otherwise, the gift should be donated to charity and the gift's disposition should be documented.

A Cabinet Secretary receives a painting with a \$300 value from an old college friend who has no business or regulatory relationship with the state. The secretary may accept the painting, but must report the gift on his Statement of Financial Disclosure filed with the Commission.

As part of his official duty to promote economic development, an employee is involved with the expansion of a major automobile manufacturer within the state. Officials of that company provide the employee with a gift, which has a \$50 value. The employee may accept the gift, but it must be registered with the Commission and

the value over \$25 must be turned over to the proper agency. Otherwise, the employee could give it to his agency to be used by his agency to benefit the Commonwealth pursuant to KRS 45A.097.

A Director of the Division of Highway Safety Programs with the Transportation Cabinet cannot use his official position to gain access for himself and family members to the Kentucky Motor Speedway in order to meet a well-known singer and actress. The Director's receipt of access to a suite overlooking the race and private access to the celebrity violates the Gifts rule because no money was paid for these items and no value can be assessed because the access includes areas that are not available to the general public.

The Agriculture Commissioner cannot use his position to receive gifts purchased with state money including firearms, carry cases, knives, cigar boxes, food, candy, and alcohol to give to his friends and family members. He also cannot accept gifts in the form of an all-terrain vehicle in exchange for a grant from his agency.

An employee with the Department of Parks who is the business manager at a State Resort Park cannot use his position to access a pontoon and ski boat owned by the State Dock for his family's personal use without paying a rental fee. Rental fees for the pontoon boat range from \$119 to \$ 299 and rental fees for the ski boat range from \$329 to \$529.

*Advisory Opinion 94-19, 00-61, 04-42, 05-38, 08-5, and 12-04
Administrative Proceedings: 10-006, 11-009, 11-010, 12-002, 13-001*

NOTE: Any Advisory Opinions or Administrative Proceedings finalized after 2017 should be reviewed in conjunction with KRS 45A.097, which may supersede the decisions.

FUNDRAISING

SOLICITING FOR CHARITIES: You (or your agency) should not solicit money, goods, or services, or accept donations, from persons or businesses that do business with or are regulated by your state agency, unless the solicitation is to raise funds for a charitable, nonprofit organization. In addition, you should not accept donations from a person or business if that person or business is seeking to do business with your agency, unless the donation is to raise funds for a charitable, nonprofit organization.

AVOIDING CONFLICTS: If your job duties include regulating or you manage contracts, you should not be involved with soliciting donations for vendors or businesses that are regulated by your agency. The appearance of a conflict of interest would prohibit you from soliciting or accepting such donations.

100% RULE: All of the funds raised must go to the charity.

STATE PROGRAMS: However, an executive branch agency is not prohibited from soliciting donations for state-sponsored programs, provided the entities solicited have no business or regulatory relationship with the agency and provided the entities are not lobbying or seeking to influence matters of the agency and are not a prohibited source pursuant to KRS 45A.096(9). An agency can enter into an agreement with a not-for-profit private entity in a program that would benefit the entire Commonwealth, or would promote economic development or tourism in the state.

Source: KRS 11A.055, 9 KAR 1:060, KRS 45A.096, and 45A.097

Examples

A local supermarket offers a donation of ground meat for a chili lunch to benefit the Kentucky Employees Charitable Campaign. Your agency regulates the supermarket. You may accept the

donation of meat from the supermarket because it is for a charitable nonprofit organization.

An employee of an agency that regulates utility companies, but who works within a separate division from the division that has direct regulatory control over the utility companies, wants to solicit donations from utility companies for a worthwhile environmental educational project. The employee is prohibited from soliciting donations from the utility companies.

An employee works for the agency which regulates some aspects of the work of architects on building projects his agency must review for approval. The employee is involved, privately, in a local Habitat for Humanity project on which a local architect has offered his services. The local Habitat for Humanity organization may solicit and accept the services of the architect.

Your agency is involved in planning its 40th anniversary event. You may not solicit vendors of your agency to contribute to the event.

The national professional association for employees of your agency plans to host its annual meeting in Kentucky. Employees of your agency will be involved in the planning and conducting of the conference. Vendors of your agency wish to donate funds to sponsor a golf tournament. Employees of your agency should not solicit sponsors for the golf tournament who are vendors or are seeking to do business with your agency. However, the national professional association may seek such sponsors provided such solicitation does not involve employees of your agency.

The Agriculture Commissioner cannot use his position to solicit donations for a conference to be held in Kentucky from organizations which the Department of Agriculture regulates or has a business relationship with or from organizations who represent groups that the Department regulates.

Advisory Opinions 93-45, 00-15, 02-20, 09-02, 09-30, 10-02, and 13-001

OUTSIDE EMPLOYMENT

BASIC RULE: You are prohibited from accepting outside employment from any person or business that does business with or is regulated by your state agency, unless the outside employment is approved by the your appointing authority.

STATEMENT OR REQUEST FORM: To obtain approval for such outside employment, you must submit a statement to your appointing authority affirming that in your state employment you are not involved in any decisions concerning the outside employer for whom you wish to work.

APPROVAL: The appointing authority may not approve the outside employment if you are involved in any matters concerning the outside employer for whom you wish to work.

HIGHER EDUCATION: The Ethics Code does not prohibit an employee from accepting outside employment with a state college or university as long as such employment does not interfere with or is not in conflict with the employee's state employment duties.

MORE RESTRICTIVE POLICIES: Agencies may establish more stringent outside employment policies than prescribed by the Ethics Code. Before undertaking any sort of outside work for which you will receive compensation, the Commission strongly encourages you to consult with your own agency regarding the matter.

Source: KRS 11A.040(10), KRS 11A.120, and 9 KAR 1:050

Examples

A public servant works as a youth social worker for the state. In addition, the public servant would like to obtain outside employment with a nursing home that is regulated by the agency for which the

public servant works. The public servant is not involved in any decisions concerning nursing homes in his state employment. The public servant may accept outside employment with the nursing home if he submits a request and obtains the approval of his appointing authority.

A public servant works as a nurse for a state-administered hospital. In addition, the public servant sells beauty products for a company which is not regulated by, nor does business with, the state agency for which she works. The public servant may continue her outside employment because there is no business or regulatory relationship between the state agency for which public servant works and the beauty product company.

A public servant works as a state inspector of pharmacies. The public servant wishes to obtain weekend employment at a local pharmacy which the public servant inspects. The public servant is involved in her state employment in decisions concerning the outside employer for whom she wishes to work. Thus, the public servant is prohibited from such outside employment.

A public servant is a beekeeper for the state. The public servant may teach a class on beekeeping on the side if teaching classes on beekeeping is not part of her regular job duties and she avoids any conflicts of interest.

An environmental scientist with the Division of Oil and Gas in the Energy and Environment Cabinet cannot hold outside employment with a research company when some of the company's research involves a process for treating waste products which the environmental scientist regulates.

Advisory Opinions: 09-03, 09-24, 10-04, 12-03, and 15-04
Administrative Proceedings: 07-113

POST-EMPLOYMENT RESTRICTIONS

BEFORE YOU LEAVE STATE SERVICE:

You should not engage in activity in which you are using your state position to secure future employment.

- Ø You shall not seek personal employment or contracting services by the use of your office or position, **EXCEPT** you may state the fact that you hold a particular position or office in an application for employment, a resume, or curriculum vitae.
- Ø You shall not negotiate for future employment with a person or business that does business with or is regulated by your agency if you are directly involved in matters regarding the prospective employer, **UNLESS** you abstain from direct involvement in matters regarding the prospective employer and you disclose the abstention in writing to your appointing authority **BEFORE** entering into any form of negotiations for future employment.

Source: 9 KAR 1:025

“Negotiate” means that you have been offered the job and you are about to discuss salary and start date. Those discussions are considered negotiations.

AFTER YOU LEAVE STATE SERVICE:

FOR ALL PUBLIC SERVANTS

- Ø You may not act as a lobbyist, or lobbyist’s principal, or represent a person or business before a state agency for **one (1) year** from the date of termination of employment or expiration of office, in matters in which you were directly involved in the last **three (3) years** of your tenure.

Source: KRS 11A.040(8)

The term “lobbyist” includes an executive agency lobbyist registered with the Commission as well as a legislative agent registered with the Kentucky Legislative Ethics Commission. *KRS 11A.010(12)*.

Ø You are also prohibited for **one (1) year** following termination of employment from representing a person or business before a state agency in a matter in which you were directly involved during the last three years of your state tenure.

Source: KRS 11A.040(9)

A “person or business” excludes another state agency, a federal agency, a city or county government, health department or library district, or public university. *Advisory Opinion 16-04*.

“Representing” includes attending an agency proceeding, writing a letter, or communicating with an employee of an agency on behalf of someone else. *KRS 11A.010(17)*.

“Directly involved” modifies the word “matter” and means to work on personally or to supervise someone who works on personally. *KRS 11A.010(18)*.

“Matter” means to any measurable case, litigation, decision, grant, proceeding, application, determination, contract, claim, investigation, charge, or legislative bill. *9 KAR 1:025, Section 1(4)*.

FOR OFFICERS ONLY

After leaving state government, if you were an officer, you must wait **one (1) year** before contracting or negotiating a contract with the agency you left.

Ø You, as a former officer, are prohibited, for **one (1) year**, from knowingly, by yourself or through a business of which you own at least 5%, contracting or having an agreement with your former state agency, or from benefitting from such a contract or agreement held by a third party. This restriction does not apply to former officers of the Department of Public Advocacy whose continual representation of clients is necessary in order to prevent an adverse effect on the client.

Source: KRS 11A.040(6)

Ø You, as a former officer, must wait **one (1) year** following termination of employment to accept employment, compensation or other economic benefit from a person or business contracting with, doing business with, or regulated by the state in matters in which you were directly involved during the last **three (3) years** of your tenure.

✓ **HOWEVER**, if you seek employment with an entity regulated by your former agency, or that does business with your former agency, but you will be returning to your former employment or profession, then you may accept the position immediately, provided that:

1. You do not work on any matter involving the agency for which you worked for a period of one year, and
2. You do not act as a lobbyist or represent your new employer before your former state agency for a period of one year.

Source: KRS 11A.040(7)

"Regulated by" means an agency has either statutory or regulatory power to take some form of action for or against a person or business, such as issuing licenses, citations, penalties, grants, or awards.

"Doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, but not including the accepting of entitlement funds. *KRS 11A.010(14)*.

Examples

The Code of Ethics does not prohibit a former employee from accepting employment with a state college or university immediately following termination of his state employment.

A former public servant was responsible for reviewing permit applications from various companies. He was not considered an officer. The former public servant wishes to obtain employment with a company for which he had reviewed permit applications during his recent employment. His new employment will involve representing the company in new permit applications before the public servant's former agency. The public servant may accept employment with the company, but for one year following his termination, must refrain from representing the company before his former agency in specific permit matters in which he was directly involved.

A commissioner of a regulatory department is considering seeking employment, upon resignation, with an entity that is regulated by the agency that he heads. The commissioner will be returning to his former profession. The commissioner may accept employment with the outside entity that his agency regulates, but for six months must refrain from working on any matter involving the agency that he formerly headed. In addition, for one year, the commissioner may not act as a lobbyist or represent his employer before his former state agency.

A public servant is relieved from her job as a division director because of differences with her supervisors. Even though her termination was involuntary, she is still subject to the post-employment restrictions.

A former Park Manager, who is considered to be an officer, cannot immediately take a position with a restaurant located at a marina on a State Resort Park facility because the restaurant leases the marina facility from the Department of Parks. Doing so would mean the former public servant would be benefitting in part from an agreement and lease entered into by the Department, which he was employed within one year of leaving the Department.

A public health department is not considered a "person" or "business" as defined by the Executive Branch Code of Ethics, so a public servant and officer working for the Cabinet for Health and

Family Services may immediately go to work for a local public health department without violating post-employment provisions applicable to officers.

An officer who worked on negotiating a contract on behalf of his cabinet cannot immediately go to work for the vendor who ultimately won the contract after the officer left state service. The officer must wait one year before he can work for or accept economic benefits from the vendor.

A public servant who leaves state service cannot immediately start attending meetings and calling employees of a state agency involving a proceeding in which he worked during his last three years of employment. He must wait one year before making such contacts.

Advisory Opinions 92-8, 94-54, 94-69, 09-06, and 16-04

Administrative Proceedings: 08-012, 10-002, 11-007, 14-018, 18-006, and 19-006

FINANCIAL DISCLOSURE

Elected officials, officers, and candidates for executive branch offices are required to file Statements of Financial Disclosure (“SFD”). The disclosure statements are public records and are open to public inspection. The Commission is required to audit the statements.

The Commission will notify you if you are required to file a disclosure statement. The Statement of Financial Disclosure may be found on the Commission's website: <https://ethics.ky.gov>.

NEWLY HIRED OFFICERS: Must file a SFD within thirty (30) days of their start date with the state covering the date of hire.

ANNUAL FILING REQUIREMENT: Must file a SFD by April 15th of each year to cover the previous calendar year in which the officer was in state service.

OFFICERS LEAVING STATE SERVICE: Must file within thirty (30) days of leaving employment with state government, whether voluntarily or involuntarily.

FAILURE TO FILE: Any officer failing to file a timely SFD could have his or her pay withheld until the SFD is filed with the Commission.

Any officer who continues to fail to file the SFD or files fraudulent or insufficient information could be subject to fines and penalties consistent with a violation of the Ethics Code, including a \$5000 civil fine and a public reprimand.

The Statement of Financial Disclosure that includes:

1. Name, residential and business addresses;
2. Title of position/office which requires you to file;

3. Any other occupations of you or your spouse;
4. Positions held by you or your spouse in any other business;
5. Identity of former employers;
6. Disclosure of any businesses in which you, your spouse or your dependent child have an interest of \$10,000 at fair market value or 5% ownership interest;
7. Name and address of any source of income in excess of \$1000 for any one source to you, your spouse or dependent child;
8. Any representation for compensation by you or your spouse for any person or business before the state agency for which you work;
9. All positions of a fiduciary nature held by you or your spouse in a business;
10. Street address or location of any real property in which you, your spouse or your dependent child own an interest of \$10,000 or more;
11. Sources of gifts of money or property with a retail value of more than \$200 from any one source to you, your spouse or your child, except those from a member of your family; and
12. Identity of creditors owed more than \$10,000, except debts arising from the purchase of consumer goods;
13. Identity of family members of the filer or persons with whom the filer engaged in a business who are registered as legislative agents under KRS 6.807 or executive agency lobbyists under KRS 11A.211.

The Statement of Financial Disclosure may be filed through the Commission's e-filing system on its website: <https://ethics.ky.gov> or in person, by U.S. Mail, by electronic mail to ethicsfiler@ky.gov or by fax to (502) 696-5091.

Source: KRS 11A.050 and 9 KAR 1:010

Administrative Proceedings: 08-024, 08-027, 08-028, and 09-004

ADVISORY OPINIONS

The Executive Branch Ethics Commission is authorized to interpret the provisions of KRS Chapter 11A and issue advisory opinions. If you are unclear as to the requirements of the Code of Ethics or have questions which are not answered by the Code, you may seek an advisory opinion from the Executive Branch Ethics Commission. The Commission must receive a written request for an advisory opinion at least two weeks prior to a scheduled meeting for the request to appear on the agenda for the meeting. Please include all information relative to the situation about which you inquire. The Commission staff may contact you for additional information prior to the issuance of an advisory opinion.

A draft opinion will be reviewed by the Commission at a public meeting which you may attend. The Commission will make a determination in response to your request. Upon approval of the draft, you will be sent a copy of the final advisory opinion. An advisory opinion may protect you in the event that a complaint is filed against you. Advisory opinions are the highest level of guidance available from the Commission regarding the requirements of the Executive Branch Code of Ethics.

Source: KRS 11A.110(1)

INVESTIGATIONS

The Executive Branch Ethics Commission must investigate an alleged violation of KRS Chapter 11A upon receiving a complaint signed under penalty of perjury. The Commission may also investigate an alleged violation upon its own motion. The Commission considers information received by the Commission staff in person, by telephone, by letter or through the media. Public servants who report conduct to the Commission may be protected from reprisal by their employer under the Whistleblower Act, KRS 61.102.

If the information indicates that a public servant may have violated the Ethics Code, the Commission will determine whether to initiate a preliminary investigation upon its own motion.

Within ten days of the initiation of the preliminary investigation, the Commission must forward to the alleged violator a copy of the complaint (if applicable) and a general statement of the law violated. Thus, the Commission will notify you by certified letter if you are under investigation.

Unless an alleged violator publicly discloses the existence of the preliminary investigation, the Commission is required to keep confidential the details of the preliminary investigation until the Commission determines probable cause of a violation and initiates an administrative proceeding to determine whether there has been a violation. However, the Commission may inform a referring state agency of the status of, or any action taken on, an investigative matter referred to the Commission by the agency. It may also, for investigative purposes, share evidence, at its discretion, with the Auditor of Public Accounts, the Personnel Board, and any other agency that has jurisdiction to review, audit, or investigate the alleged offense.

If, during the preliminary investigation, the Commission determines that evidence is not sufficient to show probable cause of a violation, the employee is confidentially informed that the investigation is terminated

and such notification remains confidential. This confidentiality is designed to protect the reputation of an employee who is falsely accused of a violation or against whom there is insufficient evidence to warrant further action.

The Commission may find probable cause of a violation during a preliminary investigation, but, due to mitigating circumstances (such as lack of financial gain to the employee, lack of loss to the state, and lack of impact on public confidence) may confidentially reprimand the alleged violator rather than initiate an administrative proceeding. A confidential reprimand is sent to the public servant by certified mail.

All administrative hearings of the Commission are public unless the Commission votes to go into executive session in accordance with the open meetings law. During the administrative hearing, the alleged violator has due process rights to be represented by counsel, call witnesses, introduce exhibits, and cross examine witnesses. A final determination whether a violation occurred is made by the Commission. A respondent may appeal a final Commission order to the Franklin Circuit Court for judicial review. A respondent must file such an appeal within thirty (30) days of being served with the Commission's order.

Source: KRS 11A.080, KRS 11A.100, KRS 61.102 and KRS Chapter 13B

Advisory Opinion: 13-02

PENALTIES

The Executive Branch Ethics Commission, upon clear and convincing proof of a violation of the Ethics Code, may:

- Issue a cease and desist order;
- Require you to file a report, statement, or other information;
- Issue a written, public reprimand which will be forwarded to your appointing authority;
- Recommend to your appointing authority that you be removed from office or your position; and
- Order you to pay a civil penalty of not more than **\$5,000** for **each** violation.

In addition:

- ✓ If the violation has substantially influenced the action taken by any state agency in any particular matter, such shall be grounds for voiding, rescinding, or canceling the action on such terms as the interest of the state and innocent third persons require.
- ✓ The commission **shall** refer to the Attorney General all evidence of violations of KRS 11A.040 for prosecution – violations are Class D felonies punishable by one to five years in jail and additional fines.
- ✓ An employee who fails to file with the Commission his statement of financial disclosure by the due date will have his salary withheld until the statement is filed.

Source: KRS 11A.100 and KRS 11A.990

EXECUTIVE AGENCY LOBBYING

Persons and entities engaged to make contacts with executive agency officials or staff in an attempt to influence a decision concerning the expenditure of state funds are executive agency lobbyists and are required to register with the Executive Branch Ethics Commission

An executive agency lobbyist must report to the Commission annually any expenditure made to or on behalf of an executive branch employee. In addition, the executive agency lobbyist is required to report any financial transaction he has with, or for the benefit of, an executive branch employee. A copy of the required expenditure or financial transaction statement must be sent to the official or employee by the lobbyist at least ten days prior to the date it is filed with the Commission.

Executive agency lobbyists are issued a registration card upon registration. You may request to see the registration card of a person who is attempting to influence a decision to be made concerning state funds.

For more information on executive agency lobbying, you may request an executive agency lobbying handbook from the Executive Branch Ethics Commission.

Source: KRS 11A.201-246

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