THE EXECUTIVE BRANCH ETHICS COMMISSION:



Susan Stokley Clary, Executive Director

DISCUSSION ROADMAP

- The Commission
- Statutes/Regs/EO Framework
- Investigative Process
- Scenarios



HAVE AN ETHICS QUESTION?

When in doubt, Executive Branch employees can request an Advisory Opinion from EBEC.

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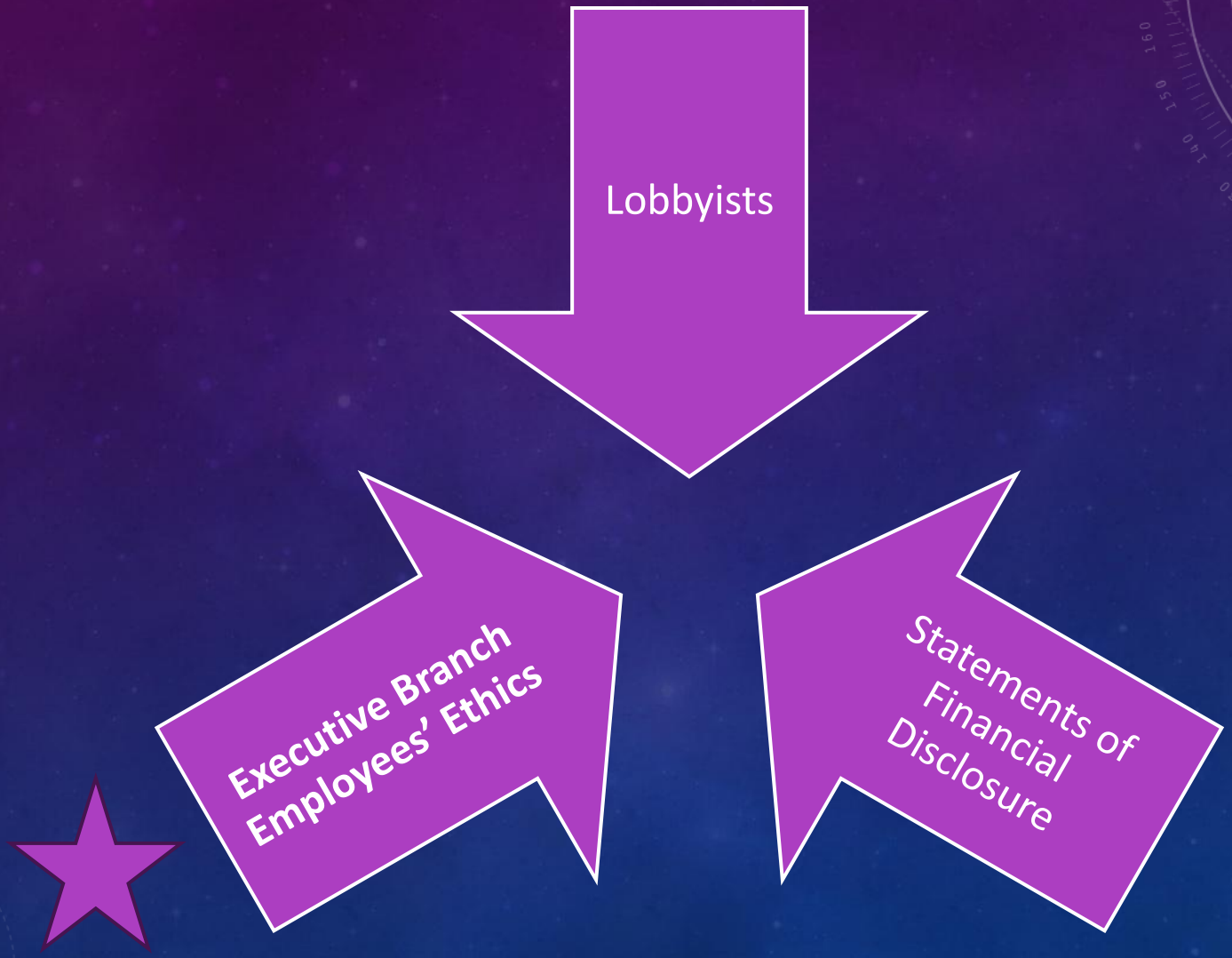
BD. OF EDUCATION AND ETHICS COMMISSION

- 1. Established-February 16, 1838
- 2. 1848-Kentucky citizens voted for a law that allowed taxation to support schools.
- 3. Kentucky Department of Education formed in 1924 to be responsible for regulating education in the state
- Watchdog of Education

- 1. Established-July 14, 1992
- 2. Defined by KAR, KRS, and Executive Orders
- 3. The Executive Branch Ethics Commission is an independent agency of the Commonwealth with the responsibility of administering and enforcing the provisions of the Code of Ethics.
- Watchdog of Ethics


EXECUTIVE BRANCH ETHICS COMMISSION

EBEC REGULATORY AREAS



STATUTORY/REGULATORY FRAMEWORK

The Executive Branch Code of Ethics (KRS Chapter 11A)

Title 9 of the Kentucky Administrative Regulations

Executive Orders

Executive Order 2008-454, 2009-882

- Governor Steven Beshear, Set ethical standards for Exec Branch Employees, Boards, and Commissions. Set up shared appointment process.

Executive Order 2016-377

- Governor Matt Bevin, Revoked shared process for EBEC appointments.

Executive Order 2020-423

- Governor Andy Beshear, Reinstated shared appointment process.
- 2022 HB 334

11A.020 Public servant prohibited from certain conduct -- Exception -- Disclosure of personal or private interest.

(1) No public servant, by himself or through others, shall knowingly:

(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

(4) The prohibitions imposed by subsection (1)(c) of this section shall not apply to Professional Golfers' Association class A members who teach golf lessons and receive a fee or lesson charge at golf courses owned and operated by the Kentucky Department of Parks. Instruction provided by an employee of the Commonwealth shall only be given while the employee is on his or her own personal time. The commissioner of the Department of Parks shall promulgate administrative regulations to establish guidelines for the process by which Professional Golfers' Association class A members are approved to teach golf lessons at Kentucky Department of Parks-owned golf courses. The exception granted by this subsection is in recognition of the benefits that will accrue to the Kentucky Department of Parks due to increased participation at state-owned golf courses.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 381, sec. 1, effective July 15, 1998. -- Created 1992 Ky. Acts ch. 287, sec. 4, effective July 14, 1992.

STATUTES SETTING OUT PROHIBITED CONDUCT

***See also*: 9 KAR 1:025** "Guidance on Prohibited Conduct and Conflicts of Interest"

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

A PUBLIC SERVANT SHALL NOT KNOWINGLY:

(1) ***Disclose*** or ***Use*** confidential info acquired through public duties.

(2) ***Receive*** interest or profit arising from use or loan of public funds in his/her hands or to be raised through any state agency.

(3) ***Act*** as rep or agent for the Commonwealth in transaction of any business or regulatory action with him/herself, or a business he/she or family member has interest greater than 5% in.

(4) Through him/herself or a business he/she owns or controls more than 5% of, or by any other person for his/her ***use/benefit, execute, hold, bid on, negotiate, or enjoy***, in whole or part, any K, lease, sale, purchase by state agency employing him/her.

Exceptions: eminent domain, public servant family can do business with any agency but employer, purchases made from state agency that are equally available to general public (ex: DOT auction), interim state employee craft sales to state parks (KRS 148.257)

(5) ***Accept*** additional compensation for performance of official duties without prior Commission approval.

Violation is a felony that is referred to the Attorney General for prosecution

POST EMPLOYMENT

"(6) A former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within one (1) year of termination of his or her employment, knowingly by himself or herself or through any business in which he or she owns or controls an interest of at least five percent (5%), or by any other person for his or her use or benefit or on his or her account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he or she was employed…."
- Ky. Rev. Stat. Ann. § 11A.040 (West)

TRANSLATION: *Don't* enter into a contract with your former employer for at least a year after leaving state government.

POST EMPLOYMENT, CONTINUED.

"(7) A present or former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within one (1) year following termination of his or her office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with, or is regulated by, the state in matters in which he or she was directly involved during the last thirty-six (36) months of his or her tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he or she was involved prior to taking office or beginning his or her term of employment, or for which he or she received, prior to his or her state employment, a professional degree or license, provided that, for a period of one (1) year, he or she personally refrains from working on any matter in which he or she was directly involved during the last thirty-six (36) months of his or her tenure in state government. This subsection shall not prohibit the performance of ministerial functions, including but not limited to filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs." Ky. Rev. Stat. Ann. § 11A.040 (West).

TRANSLATION: Don't work for someone you regulated for a year after leaving state government, on ***matters*** you were directly involved in during the three years prior.
✓ OK to return to former profession.
✓ OK to perform ministerial functions.

OUR PROCESS: FROM REFERRAL TO RESOLUTION

- SWORN COMPLAINT
  - KRS 11A.080 *requires* Commission to open a Preliminary Investigation.
  - 9 KAR 1:015 "Preadministrative Proceedings."
- NOTICE TO EBEC OF POSSIBLE VIOLATION
  - Outside referral
    - Ethics Officer, Agency, Media, General Public, Anon.)
  - Review for jurisdiction
  - Recommend Commission open Prelim Investigation OR terminate (close)
    - Closed session.



OUR PROCESS: FROM REFERRAL TO RESOLUTION



- THE (CONFIDENTIAL) PRELIMINARY INVESTIGATION
  - Alleged violator gets notice via letter within ten days of Commission's vote to open.
    - General statement of facts, law, copy of complaint (if applicable).
  - The Investigation.

    B. Alleged violator, witness, agency investigator interviews.

    C. Agency investigative file review, interagency record requests.

OUR PROCESS: FROM REFERRAL TO RESOLUTION

PREHEARING RESOLUTION: (All are approved by the Commission)

- **Settlement.**
  - Often includes civil penalty, public reprimand.
  - Possible prohibition on future employment with Exec. Branch.

- **Confidential Reprimand.**
  - Probable cause but mitigating circumstances.
  - Sent to subject of allegations and Appointing Authority.

- **Termination.**
  - No probable cause.
  - Investigation remains confidential.
    - Disclosure prohibited until final determination. 97-ORD-70.
    - Termination NOT “final determination.” 02-ORD-044.
    - Subject of allegations not entitled to records. 97-ORD-70.

COMMONWEALTH OF KENTUCKY

EXECUTIVE BRANCH ETHICS COMMISSION

SEN. DAVID K. KAREM (RET.)
CHAIR

CRIT LUALLEN
VICE-CHAIR

JUSTICE DANIEL J. VENTERS (RET.)
DAVID S. SAMFORD
RICHARD H. CAMPBELL

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SUSAN STOKLEY CLARY
EXECUTIVE DIRECTOR

SUCHETA MEENA MOHANTY
GENERAL COUNSEL

EDEN DAVIS STEPHENS
DEPUTY GENERAL COUNSEL

[redacted]

CONFIDENTIAL

CONFIDENTIAL REPRIMAND
ISSUED PURSUANT TO KRS 11A.080(4)(a)

[redacted]

RE: Preliminary Investigation [redacted]

Dear [redacted]

The Executive Branch Ethics Commission (the "Commission"), acting upon its own motion, voted in Executive Session on July 17, 2024, to initiate a preliminary investigation as to whether you violated the Executive Branch Code of Ethics contained in Kentucky Revised Statutes Chapter 11A. The focus of the initial investigation concerned your violation of KRS 11A.020(1). [redacted]

On this same date, the Commission also voted to find probable cause that you violated KRS 11A.020(1) when you [redacted] However, rather than choosing to initiate an Administrative Proceeding, the Commission voted to issue a Confidential Reprimand to you, as provided under KRS 11A.080(4), for this violation of the law. As mitigation for the allegation against you, the Commission considered the fact that you self-reported your conduct, that the conduct did not result in significant economic loss to the state, and that you did not benefit economically.

[redacted]

This letter shall serve as a Confidential Reprimand and brings this matter before the Commission to a close. A copy of this reprimand is being provided to your former appointing authority, the [redacted] as required under KRS 11A.080(4)(a), with directions that the reprimand be kept *confidential*.

The Executive Branch Code of Ethics (the "Code") provides that proceedings and records relating to this investigation are *confidential*. However, if you publicly disclose the existence of the Commission's action, the Code authorizes the Commission to make public any documents that were issued to you pursuant to KRS 11A.080(2)(b).

Please contact me if you have any further questions. Otherwise, the matter with the Commission is now considered closed.

Sincerely,

Susan Stokley Clary

Susan Stokley Clary
Executive Director

cc: Appointing Authority
Office of the Secretary [redacted]

SETTLEMENT AGREEMENT

This agreement, for the styled matter *Executive Branch Ethics Commission v.* [redacted] is made and entered into between the Executive Branch Ethics Commission ("the Commission") and [redacted]

[redacted] was at all relevant times mentioned in the Initiating Order, a "public servant" as defined in KRS 11A.010(9), serving as Administrative Specialist, [redacted] and subject to the Executive Branch Code of Ethics. The Commission is designated by statute as the agency responsible for enforcing the Executive Branch Code of Ethics, KRS Chapter 11A.

On July 16, 2025, the Commission alleged facts in an Initiating Order that [redacted] violated the Executive Branch Code of Ethics codified at KRS 11A.020(1)(a), (c) and (d). In settlement of the above allegations, the Commission and [redacted] agree, pursuant to KRS 11A.100, to the following:

1. [redacted] admits that she committed one (1) count in violation of the Executive Branch Code of Ethics codified at KRS 11A.020(1)(a), (c) and (d) as stated in the Appendix A to the Commission's Initiating Order, attached and incorporated by reference herein.

2. [redacted] agrees to pay the civil penalty of two thousand dollars ($2,000.00) concurrent with this agreement.

3. [redacted] waives all rights to any further Administrative Process or Appeal pursuant to KRS 13B.140 thereon.

4. The parties further agree that the acceptance of this Settlement Agreement and Final Order by both parties, and the fulfillment of its express terms, is in full accord and satisfaction of the herein referenced *Executive Branch Ethics Commission v.* [redacted]

5. This Settlement Agreement constitutes a public reprimand to [redacted], a copy of which will be provided to the relevant Appointing Authority pursuant to KRS 11A.100(3)(c).

IN WITNESS THEREOF, the parties have caused this agreement to be executed:

OUR PROCESS: FROM REFERRAL TO RESOLUTION

ADMINISTRATIVE HEARING

(If the action has not been settled)

- Initiating Document.
- KRS 11A.100(1): 13B applies except for provisions of:
  - 13B.030(2)(b)- EBEC hires own Hearing Officer.
  - 13B.050(1),(2),(3)- Party failing to Answer/participate
  - 13B.090(7)- 13B burden shifting framework does not apply.
    - Clear and convincing evidence.
  - Otherwise – 13 B applies
    - Right to counsel, direct/cross, exhibits.
- HO Recommended Order submitted to Commission.
  - Commission makes final determination.
- Appealable to Circuit Court.



See also 9 KAR 1:030 – "Administrative Proceedings"

APPENDIX A
CASE NO. [redacted]
INITIATING ORDER

ALLEGATION OF VIOLATIONS

The Respondent, [redacted], was at all relevant times an employee of the Commonwealth of Kentucky, serving as an Administrative Specialist for the [redacted]. As such, the Respondent was subject to the jurisdiction of the Commission pursuant to KRS 11A.010(9)(h).

During its Preliminary Investigation, the Commission found probable cause to believe that [redacted] committed the following violation:

COUNT I

[redacted], during the course of her employment as an Administrative Specialist, used her position in a manner which involved a substantial conflict between her personal or private interest and her duties in the public interest. Specifically, on [redacted] admitted to engaging in an inappropriate sexual relationship with [redacted] where she was employed. In doing so, [redacted] conduct created a conflict between her personal interest and her public duties, wherein she used her position to create exemptions and treatment for herself in derogation to the public interest at large.

These facts constitute violations of KRS 11A.020(1)(a) and (d).

KRS 11A.020 provides:

> (1) No public servant, by [herself] or through others, shall knowingly:
>
> (a) Use or attempt to use [her] influence in any matter which involves a substantial conflict between [her] personal or private interest and [her] duties in the public interest; [and]
>
> (d) Use or attempt to use [her] official position to secure or create privileges, exemptions, advantages, or treatment for [herself] or others in derogation of the public interest at large.

(End of Document)

DRAFT

OUR PROCESS: FROM REFERRAL TO RESOLUTION

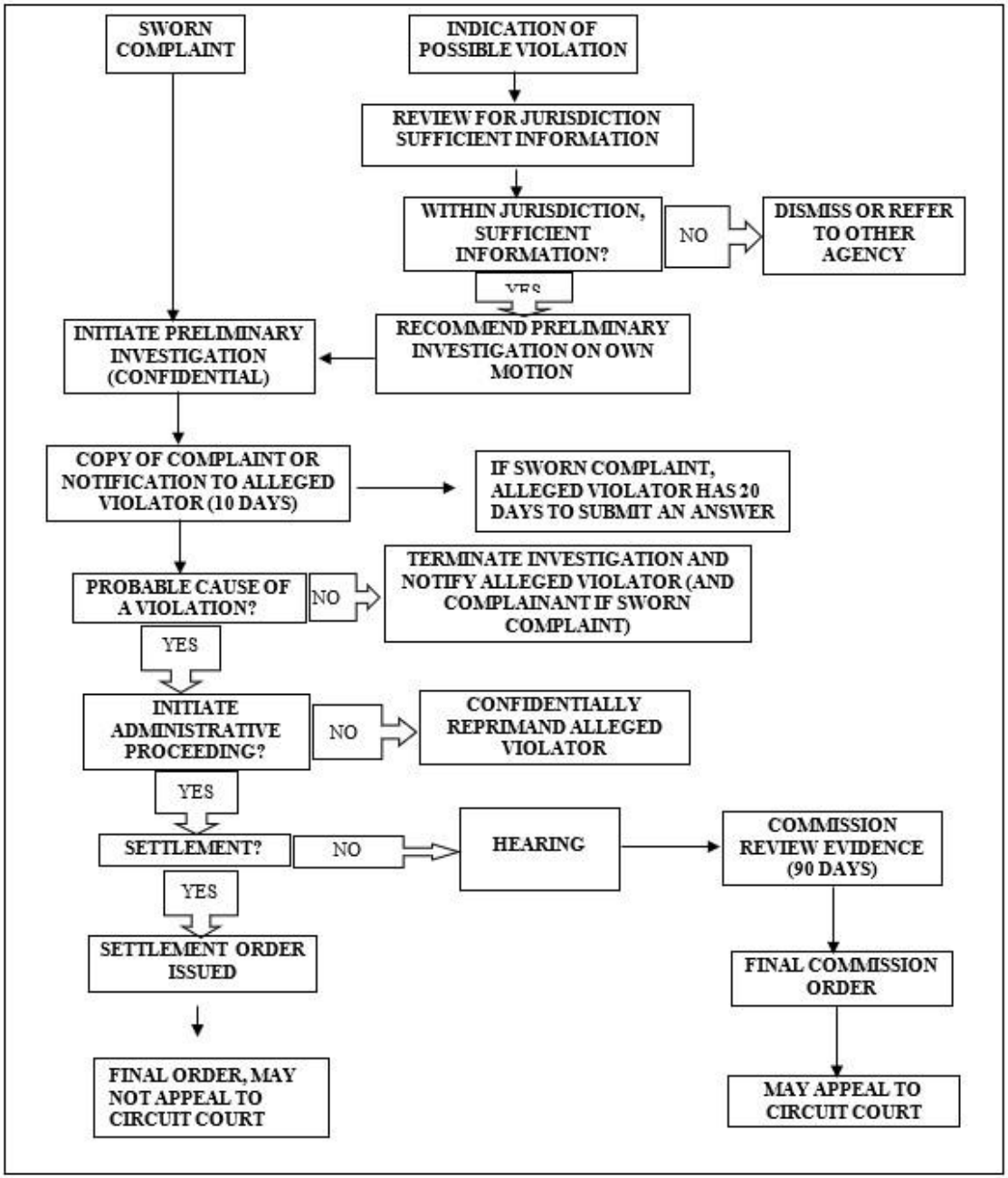


POTENTIAL PENALTIES.

- KRS 11A.100(3)(A)-(E)
  - Cease and Desist.
  - Public Reprimand.
  - Recommend discipline up to dismissal or officer removal.
  - Civil penalty (not more than $5,000 per count).
  - Rescission/void/cancellation of K.
    - If violation influenced Executive Branch Agency re a contractor.

KRS 11A.040-REFERRAL TO THE ATTORNEY GENERAL

EBEC Investigative Flow Chart



RECENT LEGAL DEVELOPMENTS

- KRS 413.120(2) –IMPOSITION OF A CIVIL STATUTE OF LIMITATIONS ON EBEC (5 YRS).

SEE: EXEC. BRANCH ETHICS COMM'N V. GRIMES, 710 S.W.3D 8 (KY. CT. APP. 2025).



- DECLARED TO BE UNCONSTITUTIONAL-HB 334 (2022) – REMOVED CURRENT MEMBERS OF COMMISSION, SHIFTED POWER TO APPOINT MAJORITY FROM GOVERNOR TO LESSER CONSTITUTIONAL OFFICERS.

SEE: BESHEAR V. COLEMAN NO. 2024-SC-0228-DG

HAVE AN ETHICS QUESTION?

When in doubt, Executive Branch employees can request an Advisory Opinion from EBEC.

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EXECUTIVE BRANCH ETHICS: CAN OR NO CAN?

EXAMPLE 1:

- You are a Probation and Parole Officer for the Justice Cabinet in Paducah, KY.
- On the weekends you work at the prison in Eddyville, KY for extra $.
- You met Tinderella on a dating app. You see Tinderella on the weekends when you are working nearby.
- After dating for a month, Tinderella discloses she is on two years of supervised probation for drug possession charges. Tinderella asks you to look her case up on Courtnet and KOMS.

- *Can you date Tinderella?*
- *Can you look up Tinderella on state databases?*
- *How did you get your other employment approved?*





- KRS 11A.020(1)(a) prohibits a state employee from using or attempting to use their official position in a manner that creates a conflict of interest between their personal or private interests and their duties to the public interest.

- 9 KAR 1:025, Section 2 (5) – Prohibits conflict between public duty and prurient interests.

- KRS 11A.040 (10)- Places approval of outside employment with the agency

EXAMPLE 2:



- Your BA is in Water Protection. You work as an Attorney for the Energy and Environment Cabinet, and you prosecute Water Company's violations of Kentucky's water protection laws.
- Water Company's boss likes you and starts calling you for compliance advice. Boss offers you a job managing the contracts related to a new filtration system that will be installed in the coming year.

- *Can you accept Boss' job offer?*
- *Can you work on compliance matters for the Water Company?*

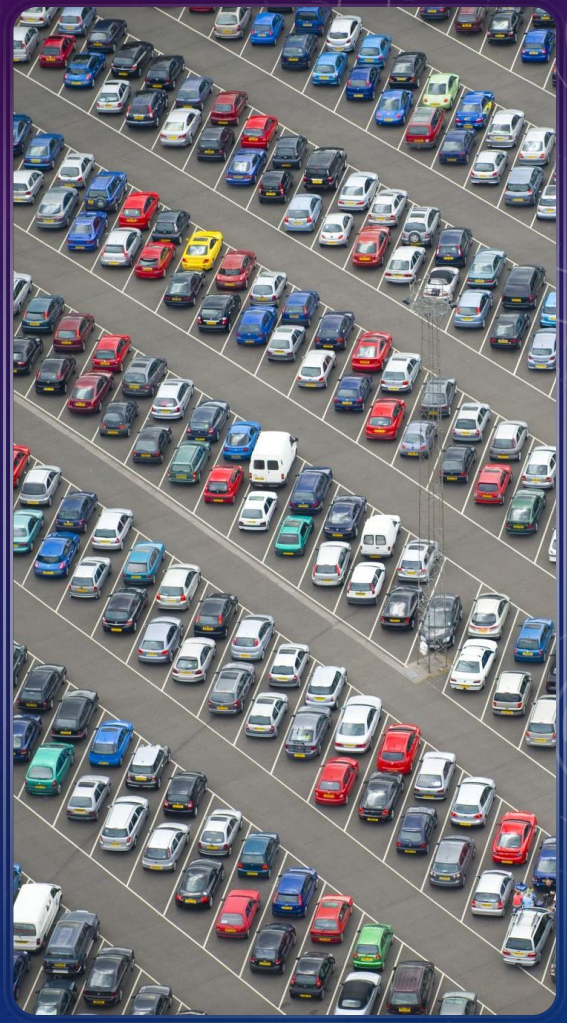


- **First, you should email Susan**……*Post-Employment Questions? Susan.Clary@ky.gov*.
- KRS 11A.040(7) permits return to prior profession.
- KRS 11A.040(9) prohibits a former state employee from working on matters he/she was directly involved in during the 36 months prior to their departure from state government **for one year following that termination date**.
- 9 KAR 1:025, Section 2 (7) – abstention guidelines re: post-employment.
- Violations are referred to the Attorney General for prosecution

EXAMPLE 3:

- You work for the Justice Cabinet in its Training Center at Eastern Kentucky University.
- You are also really good at selling cars and have many connections with car dealers in Lexington. You sell cars by Shop-n-Drop-showing customers information about cars available from dealers in Lexington and then delivering the selected car to EKU and finishing the deal. You receive a commission from both the car dealer and the customer for your services.
- A coworker contacts you. They want to buy a car that you have shown them and ask you to pick it up and park it in the lot at work. They want to meet in your office's parking lot at 3:00 pm. They will then finish the paperwork with you.

- *Can you sell cars outside of your state employment?*
- *Can you conduct car sales transactions on state government property?*





You CAN sell cars on your personal time **with approval from your Appointing Authority.**

See: KRS 11A.040(10) and 9 KAR 1:050



You CANNOT conduct car sales on state government property during a normal business day- with anyone - including, but not limited to, another state employee.

KRS 11A.020(1)(a)-(d) prohibit a state employee from using their official position in a manner that creates a conflict between their personal and private interests, using their position to obtain financial gain and using their position to create privileges for themselves or others.

9 KAR 1:025, Section 2 (3) – private interests and state time…

EXAMPLE 4:



- You are an Unemployment Insurance Specialist for the Office of Unemployment Insurance in the Education and Labor Cabinet.
- You are at an industry conference. Your boss tells you and your colleagues to join him at a fancy restaurant – to be paid for by a vendor. If you go, you can eat lots of steak and drink lots of beer with your boss and coworkers.

- *Can you go to the dinner?*
- *Can you accept the vendor's payment for your share of the tab?*



You CAN attend the dinner if you pay for yourself .



You CANNOT accept a gift over $25 – but it is best to err on the side of caution --- you ***SHOULD NOT*** accept payment for your tab from a vendor that contracts with your state agency.

KRS 11A.045(1): No public servant […] shall accept any gifts or gratuities […] totaling a value greater than twenty-five dollars ($25)…

EXAMPLE 5:



- You are a Park Ranger in SE KY for the Tourism, Arts, and Heritage Cabinet. It is the dry season and fires are prohibited. You hunt in your free time.
- You run into Mr. Money camping while you are out making your normal daily rounds. He is roasting marshmallows with his family by a campfire. You order him to put the fire out and prepare to write him a citation.
- Mr. Money says, “We have plenty of wild turkeys roaming our land. You should come down to my farm for hunting sometime soon.”

- *Can you hunt on Mr. Money’s land?*



- KRS 11A.020(1)(a)-(d) prohibit a state employee from using their official position in a manner that creates a conflict between their personal and private interests, using their position to obtain financial gain and using their position to create privileges for themselves or others.

EXAMPLE 6:



- You are an Inspector I in the Department of Housing, Building, and Construction (HBC) in the Public Protection Cabinet.
- You accessed personal contact information for HVAC licensees and downloaded that information from the databases maintained by HBC to share with your wife, who owns HVAC4U (an Online Training Platform for HVAC licensees).

- *Can you use the HBC databases for your wife's business?*

Martindale v. Exec. Branch Ethics Comm'n, No. 2020-CA-0581-MR, 2021 WL 4699537, at *1 (Ky. C

- ***NO!!!!***

- KRS 11A.020(1)(c) and (d) prohibit a public servant from using their official position for financial gain for himself or family members and prohibits using one's official position to secure advantages for self or others.
- KRS 11A.020(2) prohibits a public servant appearing before a state agency from using their position in any way that creates the appearance of working for their own personal interests.
- KRS 11A.040(1) prohibits a public servant from disclosing or using confidential information acquired in the course of their public duties to further their own financial interests.



See Martindale v. Exec. Branch Ethics Comm'n, No. 2020-CA-0581-MR, 2021 WL 4699537 (Ky. Ct. App. Oct. 8, 2021)

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Thank you!

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