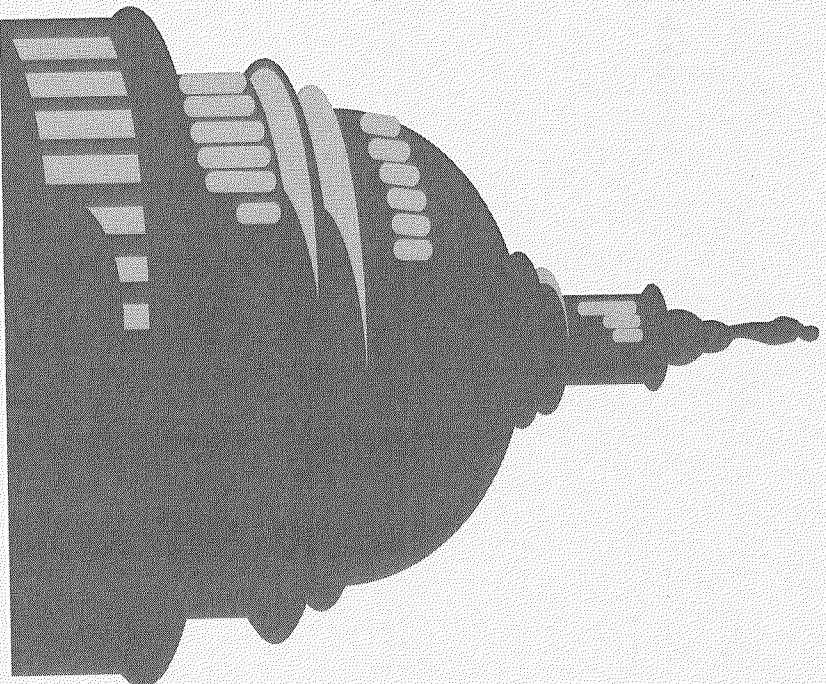


**A GUIDE TO THE
KENTUCKY CODE OF LEGISLATIVE ETHICS**



**KENTUCKY
LEGISLATIVE ETHICS
COMMISSION**

NOVEMBER 2022

**KENTUCKY
LEGISLATIVE ETHICS COMMISSION**

For more information on the subject matter discussed in this pamphlet, write, telephone or visit:

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INTRODUCTION

PURPOSE OF THE CODE OF LEGISLATIVE ETHICS

"The proper operation of democratic government requires that a public official be independent and impartial; that government policy and decisions be made through the established processes of government; that a public official not use public office to obtain private benefits; that a public official avoid action which creates the appearance of using public office to obtain a benefit; and that the public have confidence in the integrity of its government and public officials."
KRS 6.606.

THE LEGISLATIVE ETHICS COMMISSION

The Kentucky Legislative Ethics Commission (KLEC) is an independent authority established to administer and enforce the Kentucky Code of Legislative Ethics. The KLEC has jurisdiction over "legislative agents" (lobbyists), "employers" (individuals or entities who engage legislative agents), members of the General Assembly, and legislative candidates.

The legislative ethics law covers four broad subject matters, which are described in this pamphlet:

- Registration of legislative agents and employers;
- Statements by legislative agents and employers of lobbying expenditures and expenses and statements of financial transactions;
- Conduct of members of the General Assembly; and
- Financial disclosure statements of members of the General Assembly, legislative candidates, and key legislative staff.

This pamphlet provides general information only. The Code of Legislative Ethics can be found in the Kentucky Revised Statutes at KRS 6.601 to 6.849.

LOBBYING

Lobbying is promoting, advocating, or opposing the passage, modification, defeat, or executive approval or veto of any legislation by direct communication with the officials listed below:

General Assembly Members

Governor

Secretaries of the Executive Branch Cabinets listed in

KRS 12.250:

Justice and Public Safety Cabinet
Education & Labor Cabinet
Public Protection Cabinet
Transportation Cabinet
Cabinet for Economic Development
Cabinet for Health and Family Services
Finance & Administration Cabinet
Tourism, Arts and Heritage Cabinet
Personnel Cabinet
Energy and Environment Cabinet

Any staff of the officials listed above.

Lobbying **does not** include:

1. Appearances before public meetings of the committees, subcommittees, task forces, and interim committees of the General Assembly;
2. News, editorial, and advertising statements published in newspapers, journals, or magazines, or broadcast over radio or television;
3. The gathering and furnishing of information and news by bona fide reporters, correspondents, or news bureaus to news media;
4. Publications primarily designed for, and distributed to, members of bona fide associations or charitable or fraternal nonprofit corporations;

5. Professional services in drafting bills or resolutions, preparing arguments on these bills or resolutions, or in advising clients and rendering opinions as to the construction and the effect of proposed or pending legislation, if the services are not otherwise connected with lobbying; or
6. The action of any person not engaged by an employer who has a direct interest in legislation, if the person, acting under Section 1 of the Kentucky Constitution, assembles together with other persons for their common good, petitions any official listed above for the redress of grievances or other proper purposes.

WHO MUST REGISTER WITH THE COMMISSION?

LEGISLATIVE AGENT (lobbyist) - Any individual who is engaged during at least a portion of his time to lobby as one of his official responsibilities; or engaged in lobbying activities as legislative liaison of an association, coalition, or public interest entity formed for the purpose of promoting or otherwise influencing legislation.

EMPLOYER - A person or entity who engages a legislative agent is an employer.

WHO IS NOT A LEGISLATIVE AGENT?

- Persons who limit their lobbying activities to appearing before public meetings of legislative committees, subcommittees, or task forces, or public hearings or meetings of public agencies.
- Private citizens who receive no compensation for lobbying and who express a personal opinion.
- A public servant acting in a fiduciary capacity as a representative of an agency, college, university, or city, county, urban-county, consolidated local government, unified local government, or charter county government, except persons engaged by a de jure municipal corporation, such as the Kentucky Lottery Corporation or the Kentucky Housing Corporation, institutions of higher education, or local government, whose primary responsibility during the sessions of the General Assembly is to lobby.

REGISTRATION

Any **employer** who engages a **legislative agent** must register with the Commission within seven days of that engagement on an Initial Registration Statement and pay a fee of \$250, for one or more legislative agents. The registration expires December 31 of every odd-numbered year.

Any **legislative agent** who has been engaged by an **employer** must register with the Commission within seven days of that engagement on an Initial Registration Statement.

Example: The KY Chamber of Commerce is registered with the Commission and has several registered lobbyists. The Chamber decides to contact local chambers and ask that their members contact legislators on a particular matter. Are these local members required to register as lobbyists?

NO. Since the local members are not being engaged or paid to lobby, there is no registration requirement. Local citizens are free to contact legislators about matters of particular importance.

Example: ABC Company is registered with the Commission and has a lobbyist. The Company President calls a meeting of the employees of the company. Employees are informed of legislation that will have an impact on their employment. Employees are encouraged to contact legislators and even travel to Frankfort to talk to members of the General Assembly. Should employees register as lobbyists?

NO. As long as employees are encouraged and not instructed to contact legislators, and not paid to lobby, there is no registration requirement. If the employees have been given specific assignments and are being required to meet with General Assembly members and then report the results of these meetings to the employer, then the employees would be required to register.

Example: A company has hired a lobbyist in Kentucky. The lobbyist has arranged for the President of the Company and expert employees to testify before a Senate Committee. After the meeting, the President of the Company will be meeting with specific General Assembly members. Who must register with the Commission?

Experts who are providing testimony in a committee setting are not required to register as lobbyists. However, since the President of the Company will meet with specific legislators outside of the committee setting, the President will be required to register as a lobbyist even if it is just for the day.

INITIAL REGISTRATION STATEMENT

Employers and legislative agents must file an initial registration statement with the Commission. Legislative agents must file a registration statement for every engagement. The statement contains the name and address of the employer and legislative agent, the nature of the employer's business, the bill number or a brief description of the legislative action for which the legislative agent is or will be engaged, the date the legislative agent was engaged, and certification by the employer and legislative agent that the information contained in the registration is complete and accurate.

UPDATED REGISTRATION STATEMENT

Each **employer** and **legislative agent** must file an updated registration statement with the Commission. Forms must be received by the Commission by 4 p.m. as listed below:

<u>Reporting Period:</u>	<u>Due:</u>
January 1 - 31	February 15 th
February 1 - 28	March 15 th
March 1 - 31	April 15 th
April 1 - 30	May 15 th
May 1 - August 31	September 15 th
Sept. 1 - December 31	January 15 th

For the purpose of assessing administrative penalties, the Commission considers updated registration statements timely if postmarked or filed online by the due date listed on the form. The Commission is permitted to grant a reasonable extension of time for filing the updated registration statement for good cause shown. (KRS 6.807) If you would like to fax your report, the Commission's fax number is (502) 573-2929.

Updated registration statements must be filed with the Commission by employers and legislative agents at the designated times. The continuing existence of each engagement listed on an initial registration statement must be confirmed. Each bill or resolution lobbied must be listed. Expenses, expenditures, and financial transactions must also be included on the statement.

Employer short forms and legislative agent short forms may be substituted for the updated registration statements if there are no financial transactions (as defined in the Code) to report, the agent has expended no sums for lobbying activities, and the employer has expended no sums other than agent compensation for lobbying activities during the reporting period.

TERMINATION OF LEGISLATIVE AGENT

A legislative agent, within 30 days after the termination of a lobbying engagement, must notify the Commission by filing a termination of engagement statement on forms provided by the Commission.

LEGISLATIVE AGENT AND EMPLOYER RECORD

KEEPING

All legislative agents and employers must retain receipts or maintain records for all expenditures that are required to be reported pursuant to the Code. These receipts or records must be maintained until the thirty-first day of December of the second calendar year after the year in which the expenditure was made.

PENALTIES FOR FAILURE TO FILE REGISTRATIONS

Any legislative agent or employer who fails to file the initial registration statement or updated registration statement, or who fails to remedy a deficiency in any filing in a timely manner after notification from the Commission, may be fined by the Commission an amount not to exceed \$100 per day, up to a maximum total fine of one thousand dollars \$1000.

Any legislative agent or employer who intentionally fails to register shall be guilty of a Class D felony.

VIOLATIONS OF THE CODE OF ETHICS FOR LEGISLATIVE AGENTS AND EMPLOYERS

- ✓ Failure to register with the Commission is a Class D felony.
- ✓ Failure to keep a receipt or maintain a record of expenditures.
- ✓ Failure to file updated registration statements with the Commission.
- ✓ Offering, giving, or agreeing to give anything of value to a legislator, a candidate, or the spouse or child of a legislator or candidate.
- ✓ A legislative agent is prohibited from serving as a campaign treasurer, and shall not directly solicit, control, or deliver a campaign contribution for a candidate or legislator.
- ✓ A legislative agent is prohibited from making a campaign contribution to a legislator, a candidate, or a legislative campaign committee.
- ✓ An employer is prohibited from making a campaign contribution to a legislator, a candidate, or a legislative campaign committee during a regular session of the General Assembly. (Note-this provision was not changed in the law, although the parallel provision for legislators running as statewide candidates was amended in 2022 to permit those legislators to accept employer campaign contributions during a regular session.)
- ✓ An employer is prohibited from employing, appointing, or retaining a serving legislator or former legislator as a legislative agent until at least two years have elapsed from the date the legislator left office.
- ✓ A legislative agent or employer is prohibited from engaging any person to lobby in exchange for compensation that is contingent in any way upon the passage, modification, or defeat of any legislation. No person is permitted to accept any engagement to lobby in exchange for compensation that is contingent in any way upon the passage, modification, or defeat of any legislation.
- ✓ A legislative agent or lobbyist is prohibited from going upon the floor of either house of the General Assembly while the house is in session, except upon invitation of that house.

WHAT CONSTITUTES "ANYTHING OF VALUE?"

Legislative agents and employers cannot offer, give, or agree to give "anything of value" to a legislator, a candidate, or the spouse or child of a legislator or candidate.

Examples of "anything of value"

- ★ money
- ★ promissory note
- ★ contract
- ★ forgiveness of indebtedness
- ★ property
- ★ promise or offer of employment
- ★ gift, including food and beverages
- ★ work of art, antique, or collectible
- ★ automobile or other means of personal transportation

Examples of what is not "anything of value"

- ★ campaign contribution properly received and reported
- ★ compensation, food, beverages, entertainment, transportation, lodging, or other goods or services extended by the legislator's private employer or by a person other than a legislative agent or employer
- ★ usual and customary commercial loan made in the ordinary course of business, without regard to the recipient's status as a legislator, and by a person or institution authorized by law to engage in the business of making loans
- ★ certificate, plaque, or commemorative token of less than \$150
- ★ promotional items of less than \$50
- ★ educational items
- ★ informational items
- ★ food and beverages at events that meet certain criteria discussed on the following page
- ★ any service spontaneously extended to a legislator in an emergency situation
- ★ anything for which the recipient pays or gives full value

All expenditures by legislative agents and employers must be reported on an updated registration statement filed with the Commission listing details of the expenditure. This includes the cost of advertising that appears during a session of the General Assembly and that supports or opposes legislation.

Legislative agents and employers may sponsor meetings, receptions, and other events which a legislator may attend either individually or with other legislators.

The cost of attendance or participation and food and beverages at the event may be provided by legislative agents and employers if the event meets stringent criteria and requirements for attendance by legislators. These events must meet one of the following tests:

- (1) All the members of the Kentucky Senate or the House of Representatives, or both, are invited;
- (2) All members of a joint committee or task force of the Kentucky Senate and the House of Representatives are invited;
- (3) A caucus of legislators that has been approved as a caucus by the Legislative Research Commission is invited;
- (4) The event is sponsored or coordinated by a state or local government entity, including a state institution of higher education, provided that the cost thereof is covered by the state or local government entity or state institution of higher education; or
- (5) It is an in-state event to which an individual legislator is invited and for which the legislator receives prior approval from a majority of the Legislative Research Commission.

Legislative agents and employers are required to report expenditures for these events on updated registration statements, but the expenditures are not attributed to an individual legislator so long as a recognized group of legislators are invited. If an individual legislators name is reported, the legislator must be notified 10 days prior to filing the employer or legislative agent report.

STATEMENTS OF FINANCIAL TRANSACTIONS

Any legislative agent or any employer who has had a financial transaction with or for the benefit of any member of the General Assembly, Governor, secretaries of the cabinets, or any member of the staff of those officials is required to file the details of the transaction with the Commission. The statements must be filed with the updated registration statements at the specified time. A copy of the financial transaction statement must also be delivered to the official with whom or for whose benefit the transaction was made at least 10 days before the date the statement is filed with the Commission.

PUBLIC RECORD

All initial registration and updated registration statements are records open to public inspection. The Commission will provide copies of the statements to the general public upon request for the cost of copying each statement.

CODE OF ETHICS FOR LEGISLATIVE BRANCH

The Code of Legislative Ethics establishes standards for the legislative branch. Included in the Code are guidelines for legislators and legislative candidates.

STANDARDS OF CONDUCT

The standards of conduct permit a legislator to contact a state agency on behalf of a person. The standards prohibit a legislator from:

- Using or attempting to use influence as a member of the General Assembly in any matter that involves a substantial conflict between the legislator's personal interest and duties in the public interest.
- Using legislative position or office to obtain financial gain for the legislator, any member of the legislator's family, or a business associate of the legislator.

- Using or attempting to use the legislative position to secure or create a privilege, exemption, advantage, or treatment for the legislator or others in direct contravention of the public interest at large.
- Using public funds, time, or personnel for the legislator's private gain or that of another, unless the use is authorized by law.
- Using public funds, time, or personnel for partisan political campaign activity, unless the use is authorized by law; or properly incidental to another activity required or authorized by law, such as elections to constitutional or party offices within the General Assembly.

- Using official legislative stationery, or a facsimile thereof, to solicit a vote or a contribution for the legislator or another person's campaign for election or reelection to public office, or using the great seal of the Commonwealth on legislator's campaign stationery or campaign literature.
- Using spirituous, vinous, or malt liquors, or any controlled substance to intoxication while in the discharge of official duties.

SPECIFIC STANDARDS OF CONDUCT

- Confidential information acquired in the course of official duties cannot be used to further personal economic interest.
- Certain specified state agency contracts with a legislator or legislative candidate are not permitted.
- Real property sales or leases are prohibited between a state agency, a legislator, the spouse of a legislator, or any business in which the legislator or spouse own or control an interest.
- Honoraria are prohibited unless the appearance, speech, or article is both related to the legislator's employment outside the General Assembly and is unrelated to the position of legislator.
- Out-of-state travel: a legislator may accept prepaid transportation, food, and lodging or be reimbursed for actual expenses for out-of-state travel associated with the performance of the duties of a legislator if the legislator obtains prior approval of the duties of a majority of the Legislative Research Commission; however, legislative agents and employers shall not furnish or pay for out-of-state transportation or lodging for a legislator.

- Additional compensation or gifts for performance of legislative duties is prohibited.
- Soliciting, accepting, or agreeing to accept anything of value by a legislator or the legislator's spouse from a legislative agent or an employer is prohibited.
- A legislator is prohibited from being a legislative agent while serving as a legislator and until two years have elapsed since the date the legislator left office. Immediately after leaving office, a legislator may be a legislative agent for a public agency.
- While serving as a member of the General Assembly a legislator is prohibited from accepting appointment as a state officer or employee, except by a state university, community college, or local school board.
- A legislator is also prohibited from accepting appointment as a member of a governing body of a special district that has authority to levy taxes or set rates.
- Members of the General Assembly, candidates for the General Assembly, or legislative campaign committees are prohibited from accepting campaign contributions from legislative agents.
- Members of the General Assembly, candidates, and legislative campaign committees are prohibited from accepting campaign contributions from employers of legislative agents or from PACs during the regular session. Legislative candidates in a special election and candidates contemporaneously seeking election for statewide office, while serving as a legislator, are exempt from this prohibition.

CONDUCT IN RELATION TO STATE AGENCIES

As part of a legislator's official responsibilities, legislators are called upon to engage in a broad range of services on behalf of constituents and other persons, including presenting citizen concerns to state agencies. In the course of such activity, legislators may not use or attempt to use any means to influence a state agency in direct contravention of the public interest at large. The ethics code provides that: "Absent an express or implied threat of legislative reprisal, nothing in this subsection shall prevent a legislator from contacting a state agency on behalf of a person." Legislators are also banned from appearing before a state agency as an expert witness for compensation.

- Certain restrictions apply to legislators who are licensed professionals. These legislators may not represent or engage in negotiations on behalf of a client for compensation, before or with a state agency in proceedings related to:
- a. contracts for sale or lease of real property, goods, or services from a state agency,
 - b. ratemaking,
 - c. adoption, amendment, or repeal of administrative regulations,
 - d. grants,
 - e. licensing or permitting, except driver's licenses,
 - f. the Public Service Commission.

Legislators are prohibited from representing the Commonwealth or any state agency for compensation; they are also prohibited from maintaining, for compensation, an action for money damages against the Commonwealth in which the Commonwealth is the principal defendant, or against a state agency in which the principal defendant, with the exception of workers' compensation cases, unemployment cases, or appeals by the Commonwealth against the client. (See KRS 6.744 for further provisions concerning representation of clients before state agencies.)

FINANCIAL DISCLOSURE

Members of the General Assembly, candidates and nominees for election to the General Assembly, and major management personnel in the legislative branch, including the director, deputy directors, and assistant directors of the Legislative Research Commission, are required to file a statement of financial interests. These statements are filed on February 15 of each year, for the previous calendar year, with the exception of candidates and nominees who must file no later than 21 days after they become a candidate at a regular election or within 10 days of the filing deadline if it is a special election. These statements disclose such items as income, property, and investments. Statements of financial disclosure become public record upon receipt by the Commission. These statements may be reviewed and copied at the office of the Commission during business hours.

LEGISLATIVE STAFF

A legislator is prohibited from using legislative personnel or other resources for private gain or for partisan political campaign activity. In addition, the Legislative Research Commission has published guidelines for legislative staff regarding staff relationships with legislative agents and vendors.

- Staff members of the Legislative Research Commission are prohibited from accepting anything of value from a legislative agent (lobbyist), a legislative agent's employer, or persons with identifiable interests in legislative action.
- Staff members with responsibility for purchasing, or advising others on purchasing, are prohibited from accepting anything of value from a vendor or prospective vendor. These prohibitions do not apply to the acceptance of anything of value from an immediate family member, acting as a family member, as opposed to acting as a legislative agent, a legislative agent's employer, or a vendor.
- Staff members are prohibited from placing themselves in a position of accepting food or beverages from a legislative agent or employer of legislative agents by attending a function sponsored or hosted by legislative agents or their employers and not held in conjunction with an LRC, or LRC-sanctioned event. (Personnel Manual, of the Legislative Research Commission)

The Legislative Ethics Commission

The Kentucky Legislative Ethics Commission is composed of nine members and a full-time staff to administer the Legislative Code of Ethics. Commission members serve staggered four-year terms and four are appointed by the President of the Senate, four by the Speaker of the House, and one by the Legislative Research Commission. The Commission is an independent agency within the legislative branch of state government.

The Commission holds a regular meeting every month that is open to the public. At these meetings, the Commissioners issue advisory opinions and take actions necessary to administer the ethics law.

ADVISORY OPINIONS

The Commission may issue written advisory opinions to persons seeking guidance concerning matters within the Commission's jurisdiction. A request for an advisory opinion must be submitted to the Commission in writing, stating the relevant facts, and asking specific questions. The request remains confidential unless confidentiality is waived by the requester or upon vote by the Commission to also make public the advisory opinion request and related materials.

A written advisory opinion issued by the Commission is binding on the Commission in any subsequent proceeding concerning the facts and circumstances of a particular case if no intervening facts or circumstances arise which would change the opinion of the Commission if they had existed at the time the opinion was issued. The written opinion is also admissible in the defense of any criminal prosecution or civil proceeding for violations of the Code for action taken in reliance on the opinion.

LEGISLATIVE ETHICS EDUCATION

A key component of the Kentucky Code of Legislative Ethics is ethics education and training. The Commission conducts programs that provide guidance on ethics statutes, regulations, policy underlying the laws, explanations of legal requirements, and applications of the law. The Commission staff also engages in consultations on ethics issues with individuals covered by the Code, makes presentations on the Code, and answers questions concerning the Code by telephone or written correspondence.

REVIEW OF DISCLOSURE DOCUMENTS

Upon receipt of statements filed with the Commission pursuant to the Code, the Commission reviews each statement for compliance, and notifies persons regarding failure to file or deficiencies in the filing. A person who fails to file a statement or to remedy a deficiency in a timely manner, after being identified in a notice from the Commission, may be fined by the Commission an amount not to exceed \$100 per day up to a maximum total fine of \$1000.

THE COMPLAINT AND HEARING PROCESS

The process begins with the filing of a sworn written complaint. The complaint must contain the essential facts which state the alleged violation. The Code authorizes Commission members or staff to file complaints.

When the Commission receives a complaint, it must notify the alleged violator within ten days. The alleged violator has 20 days in which to answer. The filing of an answer is optional and failure to do so cannot be used against the alleged violator. Within 10 days of the filing of an answer or the expiration of the response period, the Commission initiates a preliminary inquiry. All Commission proceedings and records regarding the inquiry remain confidential unless disclosed publicly by the alleged violator or the complainant.

If during the course of the inquiry, the Commission determines the complaint fails to state a claim of an ethics violation, it is dismissed. Dismissal may be at a regularly scheduled or teleconference meeting. If on the other hand, the Commission finds probable cause to believe a violation occurred, it can issue a confidential reprimand or initiate an adjudicatory proceeding.

The adjudicatory proceeding is similar to a civil trial. It is open and conducted pursuant to the Kentucky Rules of Civil Procedure and Kentucky Rules of Evidence. The parties may call witnesses and introduce evidence. If at the conclusion of the hearing the Commission finds by clear and convincing evidence that a violation occurred, it may:

- *issue fines of not more than \$2,000;
- *revoke the registration of a legislative agent or employer for a period of up to five years;
- *publicly reprimand the violator;
- *recommend sanctions to the house in which the violator serves; or
- *issue cease and desist orders or orders requiring the filing of information.

Persons found to have violated the Code may appeal the Commission's decision to the Franklin Circuit Court within 30 days.

This Guide is a general overview of the Code of Legislative Ethics written for citizens interested in the Code.

For more information on the subject matter discussed in this pamphlet, write, telephone or visit:

Legislative Ethics Commission
22 Mill Creek Park
Frankfort, KY 40601

(502) 573-2863

(502) 573-2929 Fax

Internet Website:

<https://klec.ky.gov>

For a more detailed Handbook to the Code of Legislative Ethics, contact the Commission office.