

The Ethics Reporter

JULY 2023

KENTUCKY LEGISLATIVE ETHICS COMMISSION
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KLEC.KY.GOV

Legislative Ethics Code applies to legislators' campaigns for other offices

Did you know?



The next filing date for employers' and legislative agents' spending disclosures is **Friday, September 15, 2023**.

The easiest and quickest way to file is to visit the Commission's website klec.ky.gov and click "file forms online."



Is there a guide-book for the Code of Legislative Ethics?

Answer on page 4

The Legislative Ethics Commission has received several questions regarding contributions to current legislators' campaigns for non-legislative offices.

KRS 6.767 prohibits a member of the General Assembly or his or her campaign committee from accepting a campaign contribution from a legislative lobbyist. KRS 6.811 prohibits a legislative lobbyist from making a campaign contribution to a member of the General Assembly or his or her campaign committee.

Additionally, KRS 6.811 prohibits a legislative lobbyist from serving as a legislator's campaign treasurer, or from directly soliciting, controlling, or delivering a campaign contribution, for a legislator.

An opinion of the Ethics Commission states that a lobbyist may not make a campaign contribution to a gubernatorial slate which includes a legislator, as the legislator's campaign committee and the slate's campaign committee are one and the same. OLEC

07-02.

In OLEC 93-55, the Commission advised that a legislative lobbyist is prohibited by the Code from making a campaign contribution to a member of the General Assembly seeking a state-wide office.

The full text of formal opinions are available on the Commission's website under the "Advisory Opinions" tab.

Commission staff are available to provide guidance if there are any questions regarding these provisions.



New and terminated lobbying employers

Several organizations recently registered to lobby legislators in Kentucky: **Christ Hospital (The); Harlan County Fiscal Court; National Stem Cell Foundation; and Vision RNG.**

No organizations terminated lobbying in the previous month.

"Live long, your principles to prove."

-Effie Walker Smith

Black Poet from Pike County, Kentucky

1904

**from lines written on a book of her poetry presented to Mary Elliott Flanery, the first woman elected to the Kentucky General Assembly, who recognized Ms. Smith's talent and paid to have her work published.*

Oklahoma lobbyist spending rebounds from pandemic-era decline

OKLAHOMA-KOSU/Oklahoma Watch-by Keaton Ross –June 27, 2023

Oklahoma lobbyists have spent nearly \$380,000 this year on gifts, meals and beverages for state legislators and other elected officials through May, a 42% increase over the same period two years ago.

With COVID-19 concerns heightened, advocacy groups scaled back large in-person gatherings during the 2021 legislative session. Expenditure reports filed with the Oklahoma Ethics Commission show that sort of spending has rebounded.

In late April, the Oklahoma Restaurant Association spent \$21,000 to host a dinner reception for legislators at the Embassy Suites hotel. The Oklahoma Cattleman's Association spent nearly \$3,900 to serve lawmakers and their staff ribeye steak sandwiches and chips for lunch on May 16. Under current reporting guidelines, lobbyists aren't required to disclose individual recipients if every legislator is invited to an event.

Geoff Long, executive director of the Oklahoma Society of Professional Advocates, said scarce venue availability and rising inflation coupled to make hosting large-scale events during the pandemic more difficult. As concerns over the virus wane, lobbyists are again using come-and-go events to converse with lawmakers.

"A big piece of government affairs is really educational. No legislator is going to be an expert on everything," said Long, an attorney who previously worked as general counsel for the Oklahoma Ethics Commission. "They put these events together so you can put multiple together to talk about issues."

Lobbyists have spent more than \$183,000 on gifts, meals and beverages for state legislators, the highest total since 2019. While lobbyists may not spend more than \$500 on gifts and food for an elected official over a calendar year, elected officials aren't capped on how much they can receive.

The average lawmaker took in \$1,245 in food and gifts during the five-month peri-

od, or \$18.86 per day the Legislature was in regular session. Twenty-three lawmakers accepted more than \$2,000 in goods.

Sen. Casey Murdock was the top recipient, taking in nearly \$4,900 worth of gifts and meals from lobbyists. Murdock, who also received the most goods among legislators during the 2021 and 2022 sessions, said last year that dinners with advocates offer an opportunity for discussions on complex issues but his voting decisions are grounded in the interests of his constituents and the state as a whole.

Just two legislators, Reps. Tom Gann and Rick West did not accept gifts or food from lobbyists. Both staunch fiscal conservatives, Gann and West were the only members of the majority party to vote against their party's \$12.9 billion budget plan.

West was elected to represent House District 3 in 2016, opted not to run in 2018 and was re-elected in 2020. West said he sometimes attends lobbyist functions but always reimburses organizers for the cost of food and drink. He said he isn't critical of fellow legislators who chose to accept a meal or gift but remains concerned that lobbyists have excessive influence over some lawmakers, particularly those with less experience.

"I may make a bad vote down here, most of us do, but my constituents can't say that you voted for that because you took their money and you're bought off," West said. "It's about freedom to represent my district."

Six years ago, the Oklahoma Ethics Commission had sought new restrictions on when lobbyists may bestow a gift on legislators. A rule change implemented in January 2018 prohibits lobbyists from giving legislators or their family presents for annual events such as birthdays, and limits gift-giving to major life events like marriage or retirement.

A 2017 Oklahoma Watch investigation found that lawmakers often received birthday presents, including golf outings and Oklahoma City Thunder tickets, more than a month removed from their actual birth

date.

State law prohibits registered lobbyists from contributing to a lawmaker's campaign fund while the legislative session is active, but individuals and political action committees remain free to do so.

State senate and representative candidate committees received more than \$140,000 in monetary contributions from the onset of this year's legislative session through March 31, Ethics Commission filings show. Reports covering the second half of the session are due by the end of July.



Can public officials block critics on social media? Supreme Court to decide

National Conference of State Legislatures—by Susan Frederick, Senior Federal Affairs Counsel, NCSL—May 2, 2023

The U.S. Supreme Court will determine whether blocking critics from personal social media accounts also used for official communication with the public constitutes state action and violates the First Amendment.

The court took up two appeals last week that address a legal question left unresolved in a previous case involving former President Donald Trump’s Twitter account.

The first case, *O’Connor-Ratcliff v. Garnier*, involves two members of a California school district, the Poway Unified School District Board of Trustees, who used personal public Facebook and Twitter accounts to communicate with the public about official business matters related to the board and the district. The board members created the pages before they were elected and used them as campaign tools.

They also had private social media accounts where they posted to family and friends. Parents of children attending schools in the district were blocked from board members’ social media accounts after they criticized board members’ posts and responded with numerous repetitive replies and hundreds of comments.

The parents sued the board under 42 U.S.C section 1983, claiming that blocking them constituted a “state action” that deprived parents of their First Amendment freedom of speech rights. The district court and the 9th U.S. Circuit Court of Appeals agreed.

The appeals court held that although it is undisputed that the board members were not posting pursuant to any governmental authority or carrying out any governmental duty, and they created and maintained their social media pages without any district funding or other support, they used their pages to communicate with the public about “events which arose out of their

official status,” including matters they had the ability to discuss only “due to their positions.”

Despite that, the court said, the board members’ continual blocking of the parents’ comments and replies was “not adequately tailored to an appropriate government interest.”

In *Lindke v. Freed*, James Freed, the Port Huron, Mich., city manager, blocked Kevin Lindke from his Facebook account and deleted his critical comments. Freed created his Facebook account as a college student and maintained it over the years as his personal account. Before he was hired as a city manager, he converted his personal Facebook account to a public figure page. He posted family pictures and events as well as his press releases and other information as city manager.

Lindke began criticizing Freed on other Facebook accounts, then began posting critical comments about Freed on Freed’s personal Facebook page. Freed deleted the comments and eventually blocked Lindke from his page entirely. Subsequently, Facebook deactivated and reactivated his page several times, and Freed eventually decided to unpublish his page because he did not want a page he could not manage.

Before Freed unpublished his page, Lindke filed suit under Section 1983 alleging Freed’s deletion of his comments and subsequent blocking constituted state action and violated his First Amendment rights. Freed argued that there was no state action under Section 1983. The district court and the 6th Circuit Court of Appeals agreed with Freed.

The appeals court held that social media activity may be considered a state action when it is part of the officeholder’s actual or apparent duties, or couldn’t happen in the same way without the authority of the

office.

The court then determined that there was no law or ordinance requiring Freed to have a Facebook page, that operating a Facebook page was not a requirement of his job as city manager, and that no government funds were used to operate the page.

It rejected Lindke’s argument that Freed’s personal page communicated with the public about his job and duties as city manager, holding that “[w]hen Freed visits the hardware store, chats with neighbors or attends church services, he isn’t engaged in state action merely because he’s ‘communicating’—even if he’s talking about his job.”

With many elected officials using social media, these cases will give the Supreme Court an opportunity to resolve this difference of opinion at the circuit court level and define when an official’s use of social media should be considered personal and when it should be considered a governmental function.

The court may consolidate the cases, with a decision expected next year.



MEMBERS OF THE
LEGISLATIVE ETHICS
COMMISSION

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Anthony M. Wilhoit

NEXT MEETING OF THE
COMMISSION

The Kentucky Legislative Ethics Commission's next regular meeting is scheduled for Tuesday, August 15, 2023 at 9:30 a.m. Capitol Annex, Room 169 in Frankfort, Kentucky.

To watch the meeting online, click on:

[KY LRC Meetings - YouTube](#)

Training/Overview of the Code

Our lobbyist training video, which gives an overview of the Code and walks through the registration and online filing process step by step, is available on klec.ky.gov, and also on the LRC Capitol Connection page at <https://www.youtube.com/watch?v=nrqWW7sJDK4>

We also are happy to set up a training on request.

Our PowerPoint overview of the Legislative Ethics Code is available for reference on klec.ky.gov and also on the LRC Capitol Connection page at <https://www.youtube.com/watch?v=I4FjvhrSoao>

Financial Disclosures and Lobbying Spending

Kentucky legislators' required financial disclosures are available on the KLEC website at <https://klec.ky.gov/Reports/Pages/Legislators-and-Candidates.aspx> Legislators must file their financial disclosures by February 15th, for the previous calendar year. We are pleased to report that all legislators filed timely.

Candidates for the General Assembly are also required to file a financial disclosure, and these are also at the same link.

Lobbying spending disclosures may be found on KLEC's website at klec.ky.gov/Reports/Pages/Employers-and-Legislative-Agents.aspx along with a list of bills lobbied by each employer. A searchable database of all lobbyists and employers, and their spending, is available at apps.klec.ky.gov/searchregister.asp

To register as a lobbyist or employer, please email the scanned paperwork to Donnita Crittenden or Lori Smither or fax to (502) 573-2929. Blank forms may be found here: <https://klec.ky.gov/Forms/Pages/Get-Blank-Forms.aspx>

Please contact us with any questions or concerns!

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Trivia Answer

Yes. The Guidebook may be found online on the KLEC site at <https://klec.ky.gov/Code-of-Ethics/Documents/Guidebook2022.pdf>

or a free hard copy may be requested from staff.