

1 AN ACT relating to legislative ethics.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 6.681 is amended to read as follows:

4 (1) The commission may render advisory opinions concerning matters under its
5 jurisdiction, based upon real or hypothetical circumstances, when requested by:

6 (a) Any person covered by this code;

7 (b) Any person who is personally and directly involved in the matter; or

8 (c) The commission upon its own initiative.

9 (2) (a) An advisory opinion shall be requested in writing and shall state relevant facts
10 and ask specific questions. The request for the advisory opinion shall remain
11 confidential unless confidentiality is waived, in writing, by the requestor.

12 (b) No less than ten (10) days prior to the meeting in which the commission is
13 scheduled to consider an advisory opinion, the commission shall provide a
14 draft of its proposed response to the advisory opinion request to the
15 requestor and each commissioner. The requestor may appear personally,
16 with or without counsel, before the commission in closed session to provide
17 comment on the draft of the proposed response prior to the commission's
18 vote on the request.

19 (3) Advisory opinions shall be based on the Kentucky Revised Statutes as written and
20 shall not be based on the personal opinions of commission members as to
21 legislative intent or the spirit of the law.

22 (4) The commission shall promulgate administrative regulations to establish criteria
23 under which it may issue confidential advisory opinions. All other advisory
24 opinions shall be published except that before an advisory opinion is made public, it
25 shall be modified so that the identity of any person associated with the opinion shall
26 not be revealed.

27 (5) The confidentiality of an advisory opinion may be waived either:

- 1 (a) In writing by the person who requested the opinion; or
- 2 (b) By majority vote of the members of the commission, if a person makes or
- 3 purports to make public the substance or any portion of an advisory opinion
- 4 requested by or on behalf of the person. The commission may vote to make
- 5 public the advisory opinion request and related materials.

6 (6) (a) A written advisory opinion issued by the commission shall be binding on the

7 commission in any subsequent proceeding concerning the facts and

8 circumstances of the particular case if no intervening facts or circumstances

9 arise which would change the opinion of the commission if they had existed at

10 the time the opinion was rendered. However, if any fact determined by the

11 commission to be material was omitted or misstated in the request for an

12 opinion, the commission shall not be bound by the opinion.

13 (b) A written advisory opinion shall be admissible in the defense of any criminal

14 prosecution or civil proceeding for violations of this code for actions taken in

15 reliance on that opinion.

16 ➔Section 2. KRS 6.686 is amended to read as follows:

17 (1) (a) The commission shall have jurisdiction to investigate and proceed as to any

18 violation of this code upon the filing of a complaint. The complaint shall be a

19 written statement alleging a violation against one (1) or more named persons

20 and stating the essential facts constituting the violation charged. The

21 complaint shall be made under oath and signed by the complaining party

22 before a person who is legally empowered to administer oaths. The

23 commission shall have no jurisdiction in the absence of a complaint. A

24 member of the commission may file a complaint.

25 (b) Within ten (10) days of the filing of a complaint, the commission shall cause a

26 copy of the complaint to be served by certified mail upon the person alleged

27 to have committed the violation.

1 (c) Within twenty (20) days of service of the complaint the person alleged to have
2 committed the violation may file an answer with the commission. The filing
3 of an answer is wholly permissive, and no inferences shall be drawn from the
4 failure to file an answer.

5 (d) 1. Not later than ten (10) days after the commission receives the answer, or
6 the time expires for the filing of an answer, the commission shall
7 determine~~[initiate a preliminary inquiry into any alleged violation of~~
8 ~~this code. If the commission determines]~~ upon the affirmative vote of at
9 least five (5) members, at either a regularly scheduled meeting, or a
10 teleconference meeting called upon the chair's oral or written notice to
11 all members of the commission, whether there is reason to believe the
12 person named in the complaint has committed or is about to
13 commit~~[that the complaint fails to state a claim of]~~ an ethics violation~~;~~
14 ~~the complaint shall be dismissed].~~

15 2. If the commission determines that there is reason to believe the person
16 named in the complaint has committed or is about to commit a
17 violation of this code, upon an affirmative vote of at least five (5)
18 members, the commission shall initiate a preliminary inquiry into the
19 alleged violations pursuant to subsections (3) to (5) of this section. A
20 determination by the commission under this subparagraph:

21 a. Means that the commission believes that the alleged violation
22 merits further inquiry, and the commission shall proceed with its
23 inquiry and investigation; and

24 b. Is not a finding that a person named in a complaint has violated
25 this code.

26 3. If the commission fails to determine by an affirmative vote of at least
27 five (5) members that there is reason to believe the respondent has

1 *committed or is about to commit a violation of this code, the complaint*
2 *shall be dismissed.*

- 3 (e) Within thirty (30) days of the commencement of the inquiry, the commission
4 shall give notice of the status of the complaint and a general statement of the
5 applicable law to the person alleged to have committed a violation.
- 6 (f) A complaint may be filed against a former legislator, a former legislative
7 agent, or a former employer of a legislative agent within one (1) year of the
8 date he or she left office or terminated lobbying registration. The one (1) year
9 limitation shall not apply if a complaint alleges a violation of KRS 6.757.
- 10 (g) The applicable criminal statutes of limitation shall not apply to ethical
11 misconduct under KRS 6.601 to 6.849.
- 12 (2) All commission proceedings, including the complaint and answer and other records
13 relating to a preliminary inquiry, shall be confidential until a final determination is
14 made by the commission, except:
- 15 (a) The commission may turn over to the Attorney General, the United States
16 Attorney, Commonwealth's attorney, or county attorney of the jurisdiction in
17 which the offense allegedly occurred, evidence which may be used in criminal
18 proceedings; and
- 19 (b) If the complainant or alleged violator publicly discloses the existence of a
20 preliminary inquiry, the commission may publicly confirm the existence of
21 the inquiry and, in its discretion, make public any documents which were
22 issued to either party.
- 23 (3) The commission shall afford a person who is the subject of a preliminary inquiry an
24 opportunity to appear in response to the allegations in the complaint. The person
25 shall have the right to be represented by counsel, to appear and be heard under oath,
26 and to offer evidence in response to the allegations in the complaint.
- 27 (4) If the commission determines by the answer or in the preliminary inquiry that the

1 complaint does not allege facts sufficient to constitute a violation of this code, the
2 commission shall immediately terminate the matter and notify in writing the
3 complainant and the person alleged to have committed a violation. The commission
4 may confidentially inform the alleged violator of potential violations and provide
5 information to ensure future compliance with the law. If the alleged violator
6 publicly discloses the existence of such action by the commission, the commission
7 may confirm the existence of the action and, in its discretion, make public any
8 documents that were issued to the alleged violator.

9 (5) If the commission, during the course of the preliminary inquiry, finds probable
10 cause to believe that a violation of this code has occurred, the commission shall
11 notify the alleged violator of the finding, and the commission may, upon majority
12 vote:

13 (a) Due to mitigating circumstances such as lack of significant economic
14 advantage or gain by the alleged violator, lack of significant economic loss to
15 the state, or lack of significant impact on public confidence in government,
16 confidentially reprimand, in writing, the alleged violator for potential
17 violations of the law and provide a copy of the reprimand to the presiding
18 officer of the house in which the alleged violator serves, or the alleged
19 violator's employer, if the alleged violator is a legislative agent. The
20 proceedings leading to a confidential reprimand and the reprimand itself shall
21 remain confidential except that, if the alleged violator publicly discloses the
22 existence of such an action, the commission may confirm the existence of the
23 action and, in its discretion, make public any documents which were issued to
24 the alleged violator; or

25 (b) Initiate an adjudicatory proceeding to determine whether there has been a
26 violation.

27 (6) Any person who knowingly files with the commission a false complaint of

- 1 misconduct on the part of any legislator or other person shall be guilty of a Class A
- 2 misdemeanor.