

Rev. (12-06)

*** CURRENT OR FORMER STATE EMPLOYEE SEEKING ***
*** TO DO BUSINESS WITH THE STATE? ***

* YOU SHOULD KNOW ABOUT THESE LAWS. *

In the 1992 regular legislative session, the General Assembly passed Senate Bill 63 (codified as KRS Chapter 11A), the Executive Branch Code of Ethics, which applies to current and, in part, former state officials and employees of the executive branch.

The Executive Branch Code of Ethics is intended to promote public confidence in the integrity of state government and to declare as public policy the idea that state employees should view their work as a public trust and not a way to obtain private benefits.

If you work for the executive branch of state government or worked for the executive branch of state government within the past year, or were elected to an executive branch term of office which expired within the past year, you may be subject to the prohibitions of the law.

1. CURRENT PUBLIC SERVANTS SEEKING TO DO BUSINESS WITH THE STATE:

KRS 11A.040(4) provides:

(4) A public servant shall not knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his 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 is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

(a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or

(b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or

(c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or

(d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction; or

(e) Sales of craft items to a state park by interim state employees designated as craftspersons under KRS 148.257.

2. FORMER OFFICERS AND ELECTED OFFICIALS SEEKING TO DO BUSINESS WITH THE STATE:

KRS 11A.040(6) provides:

(6) A former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within six (6) months of termination of his employment, knowingly by himself or through any business in which he owns or controls an interest of at least five percent (5%), or by any other person for his use or benefit or on his 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 was employed. This provision shall not apply to a contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general public or that are made at public auction. This provision shall not apply to former officers of the Department of Public Advocacy whose continued representation of clients is necessary in order to prevent an adverse effect on the client.

3. FORMER OFFICERS AND ELECTED OFFICIALS SEEKING EMPLOYMENT FROM ENTITIES WHICH DO BUSINESS WITH THE STATE:

KRS 11A.040(7) provides:

(7) A present or former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within six (6) months following termination of his 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 was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, or for which he received, prior to his state employment, a professional degree or license, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his 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.

4. FORMER PUBLIC SERVANTS WHO SEEK TO ACT AS LOBBYISTS:

KRS 11A.040(8) provides:

(8) A former public servant shall not act as a lobbyist or lobbyist's principal in matters in which he was directly involved during the last thirty-six (36) months of his tenure for a period of one (1) year after the latter of:

- (a) The date of leaving office or termination of employment; or
- (b) The date the term of office expires to which the public servant was elected.

5. FORMER PUBLIC SERVANTS CONTEMPLATING REPRESENTATION OF A PERSON OR BUSINESS BEFORE A STATE AGENCY:

KRS 11A.040(9) provides:

(9) A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, for a period of one (1) year after the latter of:

- (a) The date of leaving office or termination of employment; or
- (b) The date the term of office expires to which the public servant was elected.

*** DEFINITIONS ***

"PUBLIC SERVANT" means:

- (a) The Governor;
- (b) The Lieutenant Governor;
- (c) The Secretary of State;
- (d) The Attorney General;
- (e) The Treasurer;
- (f) The Commissioner of Agriculture;
- (g) The Auditor of Public Accounts; and
- (h) All employees in the executive branch including officers as defined in KRS 11A.010(7) of this section and merit employees;

"OFFICER" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, executive directors, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems 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, the Council on Postsecondary Education, and any person who holds a

personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed above.

“BUSINESS” means any corporation, limited liability corporation, partnership, limited liability partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit.

"DOES 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, including accepting a grant, but not including accepting a state entitlement fund disbursement.

"DIRECTLY INVOLVED" means to work on personally or to supervise someone who works on personally.

"LOBBYIST" means any person employed as a legislative agent as defined in KRS 6.611(22) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(8) as any person engaged to influence executive agency decisions or to conduct executive agency lobbying activity as one of his main purposes on a substantial basis.

"EXECUTIVE AGENCY LOBBYING ACTIVITY" means contacts made to promote, oppose, or otherwise influence the outcome of an executive agency decision by direct communication with an elected executive official, the secretary of any cabinet listed in KRS 12.250, any executive agency official, or a member of the staff of any one of the officials listed in this paragraph.

"REPRESENT" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else.

IN CASE OF DOUBT, THE LAW PERMITS YOU TO REQUEST AN ADVISORY OPINION FROM THE EXECUTIVE BRANCH ETHICS COMMISSION, THE VEST-LINDSEY HOUSE, 401 WAPPING STREET, FRANKFORT, KENTUCKY 40601 (502) 564-7954.

Prepared by the
EXECUTIVE BRANCH ETHICS COMMISSION
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