The Code of Legislative Ethics: Impact on Legislators, Lawyers, Lobbyists and the Public

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The Kentucky Constitution provides for an independent legislature, and also for passage of ethics laws governing conduct of legislators, candidates, and lobbyists

- Constitutional separation of powers-power of each branch to discipline its own members
- Legislative power vested in General Assembly
- Constitutional changes drove legislative independence and increased power
- BOPTROT-led to need for reform

The Code of Legislative Ethics

- Constitutionality upheld by Associated Industries and Schickel cases
- Registration requirements
  - Legislative agents
  - Employers of legislative agents
- Reporting requirements
- Regulates conduct
  - Legislative agents
  - Employers of legislative agents
  - Legislators
- Promotes professional relationships
- Enhances public disclosure of legislative activities

Legislative Ethics Commission

- Legislative agencies may be created to provide a means to regulate legislative and lobbying entities' conduct
  - Creation of the Kentucky Legislative Ethics Commission
    - Independent body
    - No sitting legislators
    - 9 members, 4 appointed by Speaker of the House, 4 appointed by President of Senate, one joint LRC appointment
    - Members may only be removed for cause
    - Staff appointed by Commission
    - Subpoena power
    - Required training for legislators
    - Education
    - Opinions (formal and informal)
    - Complaint process –requires a signed, sworn complaint
    - Public disclosure of spending on lobbying, and legislators/legislative candidates/major management financial interests

Legislative Conduct- General standards- KRS 6.731

Use of influence- Can't use influence in a way that creates substantial conflict between legislator's personal and private interest (Class A misdemeanor)

Legislator uses his influence to benefit a contractor getting state contracts, and then receives payment for that action

Use of position or office- Can't use position or office to obtain financial gain for legislator, legislator's family, or business associate (Class D felony)

Legislator sponsors bill to benefit legislator's spouse's business

Use or attempt to use official position to secure or create privileges, exemptions, advantages, or treatment for himself of others in direct contravention of the public interest at large (Class A misdemeanor)

Legislator uses position to sexually harass employees

Legislative conduct (cont.)-KRS 6.731

- Can't use public funds, time, or personnel for private gain or that of another, unless authorized by law (Class A misdemeanor). Examples:
  - Legislator uses staff to drop off/pick up dry cleaning or perform other personal errands
  - Legislator uses state computers to conduct private business dealings
  - Legislator fills out state travel vouchers for private activity
  - Legislator takes state property for his or family's use

Legislative Conduct (cont.)-KRS 6.731

- Can't use public funds, time, or personnel for partisan political campaign activities, unless authorized by law or incidental to activity authorized by law (such as election to constitutional or party offices within the General Assembly) (Class A misdemeanor)
  - Can't use staff to send emails about GA races from legislative office
  - Can't use legislative stationery to campaign for GA races, or campaign for others
  - Can't work on legislative campaigns from GA offices or ask staff to do so

Legislative conduct (cont.)-KRS 6.731

- Can't use official legislative stationery to solicit a vote or contribution for his or another person's campaign for election or reelection to public office, or use the great seal of the Commonwealth on campaign stationery or campaign literature (Ethical misconduct)
  - Ethics Commission has developed guidelines for staff and legislators that look to content, the mailing, and timing of any communication to constituents to determine whether it is "partisan political activity".
  - The issue is whether the mailing appears to be intended to influence the election or to raise funds, or whether it is a communication w/ constituents about general legislative activity
  - A mailing that it within 60 days of the election would be particularly suspect

Legislative conduct (cont.)

- Legislators cannot be under the influence of liquor or other controlled substances, while in the discharge of their duties (Ethical misconduct) KRS 6.731

Legislators and Public Agencies-Contracts

- Legislators or candidates cannot have contracts, agreements, sales, or purchases of more than $100 with a state agency (including state universities/colleges), except for contracts/agreements:
  - Between a state agency and a business that the legislator and spouse own less than 5% of;
  - Made or let after public notice and competitive bidding;
  - Available on similar terms to members of the legislator's business, occupation or profession;
  - Entered into prior to the legislator becoming a candidate.
  - (Class D felony/voids contract)

Legislators and Public Agencies - Leases/Sales

- Legislators, spouses, and businesses owned/controlled more than 5% by legislator or spouse cannot lease/sell real property to a state agency.
- Exceptions- eminent domain, contracts prior to September 16, 1993, or nominal consideration if approved by the Commission.
- (Class D felony, voidable contract)

Legislators and Public Agencies- Influence (KRS 6.744)

- Legislators can't use or attempt to use any means to influence a state agency in direct contravention of the public interest at large (Ethical Misconduct)
  - Doesn't prevent legislator, in the absence of an express threat of legislative reprisal, from contacting a state agency on behalf of a person or constituent to make an inquiry, or obtain information for a person or constituent who has requested assistance
  - Legislators can't appear before a state agency as an expert witness, for compensation (Ethical Misconduct)
  - In any transaction with a state agency-legislator has to ask whether the issue is being brought to him for the purpose of attempting to secure improper influence, probability the agency will be unduly influenced, and the effect on public perception.

Legislators and Public Agencies-Representation (KRS 6.744)

- Legislators who are properly licensed can represent clients before state agencies for:
  - Ministerial functions not requiring agency discretion (filing corporate papers, tax returns, reports, applications for programs generally otherwise available)
  - Adversarial proceedings/negotiations
  - Workers Comp/special fund proceedings
  - Unemployment Comp proceedings
  - All other matters unless prohibited by the Code or professional conduct code of the profession

Legislators and Public Agencies-Representation (cont.)

- Legislators cannot represent state agencies for compensation
- Legislators cannot maintain actions for money damages against the state, unless it is an appeal of action by state against a client, Workers Comp, or unemployment comp
- Legislators cannot represent a client for compensation before a state agency in proceedings relating to:
  - Contracting for purchase/sale/lease of real property/goods/services from a state agency
  - Rate making
  - Administrative regulations
  - Obtaining grants or loans
  - Licensing or permitting -however, a legislator may represent a client in a ministerial function regarding licensing and permitting, adversarial matters related to a previously-issued license or permit, or matters related to driver licensing.
  - Public Service Commission proceedings

Legislators also cannot be paid expert witnesses before state agencies, nor may they accept a contingent fee for representation of a client before a state agency.

Legislators-Other offices, compensation, family members

- Legislators may not accept an appointment as an officer or employee of the Commonwealth or any state agency. (Ethical Misconduct)
- Legislators may not accept an appointment as a member of a special district board that has the ability to levy taxes or set rates (Ethical Misconduct)
- Legislators may work for local school boards, and may serve on the faculty/staff of state universities and colleges.
- Legislators may not accept honoraria for an appearance, speech or article, or other compensation for performing legislative duties (such as parking passes, club memberships) (Class A Misdemeanor). Legislators may accept compensation for their personal employment, unrelated to legislative duties.
- Members of a legislator's family shall not be appointed or employed in the legislative branch. (Ethical misconduct)
- Legislators may not advocate or cause the employment of a member of the legislator's family in the legislative or executive branch. (Ethical misconduct)

Legislators' and Candidates' Financial Disclosures

- All legislators must file a financial disclosure with KLEC every year by February 15, on a form prescribed by KLEC, for the preceding year.
- All candidates for the legislature must file a financial disclosure by 21 days after the filing deadline, on a form prescribed by KLEC, for the preceding year.
- Major management personnel for the legislative body also file a financial disclosure form.
- All forms for candidates and legislators are posted on the KLEC website.
- KLEC may levy fines for late or incomplete forms, and the intentional filing of a statement with false information or which omits required information is a Class A misdemeanor.

Legislators-Conflicts of Interest

- Legislators have private lives/professions, and are part time legislators. The right to represent their constituencies is of such importance that legislators are barred from voting on matters of direct personal interest only in clear cases and if the matter is particularly personal.
- Legislators cannot vote, discuss, or make decisions in official capacity on matters on which he/she, their family, or business associate will derive a direct monetary gain or loss, or which involves a business in which he/she owns an interest of $10,000 or more or an interest of more than 5% (Class D felony).
- Such an interest must be disclosed and the legislator must disclose the interest to the house where he/she serves, and abstain from voting under Section 57 of the Ky. Const.
  - However, the statute does not apply if the benefit or detriment is no greater than that which accrues generally to the other members of the business, occupation or profession, or other group

Lobbying and Legislators

- The Ethics Code codifies filing, disclosure, and requirements for interactions between lobbying entities and legislators.

What is Lobbying?

Promoting, advocating, or opposing the passage, modification, defeat, or executive approval or veto of any legislation by direct communication with any member of the General Assembly, the Governor, the Secretary of any cabinet, or any member of their staff. KRS 6.611(27)(a).

Exclusions from the definition of lobbying

These activities are NOT lobbying:

- Testifying before a legislative committee, subcommittee, or task force
- Writing a letter to the editor
- Writing a newsletter for an association
- General political activism
- Drafting bills
- Advising clients about the construction or effect of proposed legislation, so long as those activities are not otherwise connected with lobbying

Who registers with KLEC?

Anyone who engages in lobbying for compensation:

- During at least a portion of his or her time as one of his or her official responsibilities; or
- As a legislative liaison of an association, coalition, or public interest entity formed for the purpose of promoting or otherwise influencing legislation. KRS 6.611(23)(a).

Who is not required to register with KLEC?

- Private citizens who express a personal opinion and receive no compensation for lobbying.
- Public servants acting as a representative of their agency, college, or local government.
- Persons who limit their activity to testifying at public meetings, commenting at public hearings, writing editorials, etc. KRS 6.611(23)(b).
- Natural persons whose official responsibilities do not include lobbying, are not compensated specifically for the purpose of lobbying, is an officer, manager or employee w/ specialized knowledge of a business or group, and participates in meetings while accompanying a legislative agent engaged by the employer or organization to lobby on that particular issue * (Per 2024 HB 517, eff. 7/15/24)

Registration Requirements

A legislative agent must file an initial registration statement within 7 days of engaging a legislative agent.

- The agent and employer must file a single form and it cannot be completed online.
- The employer must pay a fee of $250 if the employer is not already registered. KRS 6.809.
  - Employers may register multiple legislative agents for a single fee.
- All registrations expire at the end of odd-numbered calendar years and must be renewed to continue lobbying. KRS 6.807.
- Failure to register is a class D felony.

Reporting Requirements

Registered legislative agents and employers must file updated registration statements six times per year.

- Report all legislation lobbied on, including bills, resolutions, and administrative regulations.
- Report all lobbying expenditures.
  - Employers must report compensation paid to legislative agents.
- Keep all receipts and records of expenditures for two years.
- Reports are due on the 15th of January, February, March, April, May, and September.

Prohibitions – Campaign Contributions

- A legislative agent is prohibited from making campaign contributions to legislators or candidates for the General Assembly at any time. KRS 6.811(6).
- A legislative agent is prohibited from serving as a campaign treasurer for a legislator or legislative candidate, and cannot solicit, control, or deliver campaign contributions. KRS 6.811(5).
- Legislative agents are free to express personal, political speech in other ways such as by stuffing envelopes, displaying yard signs, or contributing to a political party. KLEC opinion 95-8.

Prohibitions – Campaign Contributions

Registered employers of legislative agents and permanent committees (PACs) are prohibited from making campaign contributions to legislators or candidates during a regular session of the General Assembly. KRS 6.767.

Prohibitions - Miscellaneous

- A legislative agent cannot accept any engagement to lobby in exchange for compensation that is contingent in any way upon the passage, modification, or defeat of any legislation. Violation is a Class D felony. KRS 6.811(9).
- A legislative agent cannot go upon the floor of either house of the General Assembly while the house is in session, except upon invitation of that house. Violation is a Class B misdemeanor. KRS 6.811(10).

Lobbyists, employers, and legislators—Gift Prohibitions

- The Code of Legislative Ethics was passed in response to a culture of lobbying groups "treating" legislators and candidates via food, drink, and other gifts.

- A legislator or a legislator's spouse shall not accept or agree to accept "anything of value" from a legislative agent or an employer of legislative agents. Class B misdemeanor

Prohibitions – "No-cup-of-coffee rule"

- Legislative agents are prohibited from giving "anything of value" to a legislator, candidate, or to the spouse of child of a legislator or candidate. KRS 6.811(4).
  - Includes pecuniary items, tangible gifts, discounts, real or personal property, offers of employment, contracts, stocks, automobiles, and "any other thing that is pecuniary or compensatory in value"
  - Broadly defined to include food and beverages
  - Several exceptions

Exceptions to the "No-cup-of-coffee" Rule

- There are several exceptions that allow legislators to accept food, beverages, and other tangible items from legislative agents and employers under certain circumstances. KRS 6.611(2)(b).
  - Events to which a recognized group of legislators is invited, such as all members of the General Assembly, all members of a joint committee, or all members of a recognized caucus
  - Events sponsored or coordinated by a state or local government or a public university
  - In-state events for which the legislator has obtained prior approval from either the Speaker of the House or the President of the Senate
  - In-state events sponsored by a civic, charitable, trade association, or community organization
  - Plaques or commemorative tokens worth less than $150
  - Promotional items worth less than $50
  - Gifts from persons related by blood or marriage, or a member of the legislator's household
  - Gifts that are not used and are returned within 30 days of receipt
  - Attendance at LRC-approved events sponsored by multistate organizations
  - A properly-reported and received campaign contribution
  - A commercial loan made in the ordinary course of business
  - Compensation, food, beverages, lodging, or other goods or services from the legislator's employer or a non-lobbyist or non-employer of lobbyists

Reporting

- Employers and legislative agents must report all amounts spent on legislators as part of their lobbying expenses that are reported six times per year.
- The employer must report the amount and also the identity of the legislator or group of legislators who were recipients.
  - If an individual legislator is the recipient, the legislative agent or employer must notify the legislator 10 days in advance of filing the report. KRS 6.827. The legislator may then pay back the amount spent.

Other prohibitions on travel

- Legislators may accept prepaid transportation, food and lodging or be reimbursed for expenses for out of state travel associated with performance of legislative duties, as long as they receive prior approval from the House Speaker or Senate President
- However, legislative agents and employers cannot furnish or pay for out of state transportation or lodging for a legislator.
- Lobbyists and employers may pay for food, beverages, and local transportation for an event held in conjunction with a meeting of a state or national organization of state legislators/legislatures or state governments, held in accordance with KRS 6.611(2)b.

Opinions and training

- Legislative Ethics staff issue informal opinions to entities affected by the code
- Call or email with questions
- Legislative Ethics Commission can also issue formal opinions
- Legislators must undergo training every year, and new legislators also have training in December after they are elected
- Training also provided upon request by legislative agents and employers, and others interested in the Code

Other Key provisions

- Legislators can't intentionally disclose or use confidential information acquired in the course of their official duties, if the primary purpose is to further their own economic interest or that of another person (Class D felony) KRS 6.734
- Legislators may solicit contributions on behalf of charitable, civic, or educational entities provided that the solicitations are broad-based and not directed primarily at lobbyists.
- Forfeiture of legislator's retirement if convicted of a felony related to legislative office

Violations of the Code of Legislative Ethics can cut a lawyer/legislator or lawyer/lobbyist twice

- Violations of the Ethics Code may also be felonies or misdemeanors, or may parallel conflicts of interest in the Supreme Court Rules
- Supreme Court rules provide that KBA members convicted of a felony or Class A misdemeanor shall have a copy of the judgment filed with Bar Counsel, for action governing the initiation of disciplinary cases
- SCR 3.166 provides that an attorney who pleads guilty or is convicted of a felony shall be automatically suspended from the practice of law.
- Criminal acts that reflect adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer also are professional misconduct.

Public disclosure of legislative activity

- KLEC supplies lists of lobbyists and employers to the General Assembly weekly via email during the legislative session
- The list is continually updated online for the public
- Anyone can search the lists on line and see lobbying expenditures
- KLEC staff can confirm whether or not a particular person or group is registered
- Legislators are encouraged to check the lists so they will know whether a particular person or group is registered to lobby, to avoid possible violations of the Code
- Legislators' and candidates' financial disclosures are on the KLEC website
- Listing of bills lobbied upon by employers is on the KLEC website

Questions?

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