

6.681 Advisory opinions -- Draft of proposed response to advisory opinion request - Confidentiality.

- (1) The commission may render advisory opinions concerning matters under its jurisdiction, based upon real or hypothetical circumstances, when requested by:
 - (a) Any person covered by this code;
 - (b) Any person who is personally and directly involved in the matter; or
 - (c) The commission upon its own initiative.
- (2)
 - (a) An advisory opinion shall be requested in writing and shall state relevant facts and ask specific questions. The request for the advisory opinion shall remain confidential unless confidentiality is waived, in writing, by the requestor.
 - (b) No less than five (5) days prior to the meeting in which the commission is scheduled to consider an advisory opinion, the commission shall provide a draft of its proposed response to the advisory opinion request, or notice of its intention not to issue an advisory opinion, to the requestor and each commissioner. The requestor may appear personally, with or without counsel, before the commission in closed session to provide comment on the proposed response prior to the commission's vote on the request.
- (3) Advisory opinions shall be based on the Kentucky Revised Statutes as written and shall not be based on the personal opinions of commission members as to legislative intent or the spirit of the law.
- (4) The commission shall promulgate administrative regulations to establish criteria under which it may issue confidential advisory opinions. All other advisory opinions shall be published except that before an advisory opinion is made public, it shall be modified so that the identity of any person associated with the opinion shall not be revealed.
- (5) The confidentiality of an advisory opinion may be waived either:
 - (a) In writing by the person who requested the opinion; or
 - (b) By majority vote of the members of the commission, if a person makes or purports to make public the substance or any portion of an advisory opinion requested by or on behalf of the person. The commission may vote to make public the advisory opinion request and related materials.
- (6)
 - (a) A written advisory opinion issued by the commission shall be binding on the commission in any subsequent proceeding concerning the facts and circumstances of the 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 rendered. However, if any fact determined by the commission to be material was omitted or misstated in the request for an opinion, the commission shall not be bound by the opinion.
 - (b) A written advisory opinion shall be admissible in the defense of any criminal prosecution or civil proceeding for violations of this code for actions taken in reliance on that opinion.

Effective: July 15, 2024

History: Amended 2024 Ky. Acts ch. 184, sec. 1, effective July 15, 2024. -- Amended

1994 Ky. Acts ch. 479, sec. 3, effective July 15, 1994. -- Created 1993 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 42, effective September 16, 1993.