

Note: A technical, nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

**Technical Amendment
February 1, 2021**

202 KAR 7:055. Advisory opinions.

RELATES TO: 311A.040

STATUTORY AUTHORITY: KRS 311A.020, 311A.030, 311A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.040 authorizes the board to issue advisory opinions. KRS 311A.040 requires the board to promulgate an administrative regulation for submission, consideration, and disposition of a request for an advisory opinion. This administrative regulation establishes those procedures.

Section 1. Form of Request. (1) The request shall be signed by one (1) or more persons, with each signer's mailing address and telephone number, and if available, telefax number and email address, clearly indicated. If a person signs on behalf of a corporation or association, the name of the entity, the address, telephone number and telefax number of the entity shall be included. The signer shall date the request.

(2) The request shall contain:

(a) A clear and concise statement of all relevant facts on which the ruling is requested;

(b) A citation and the relevant language of the specific statutes, administrative regulations, decisions, orders, or other written statements of law or policy, where applicability is questioned; and any other relevant law;

(c) Each question the requester wants answered, stated in clear and concise language;

(d) The requester's proposed response to each question presented and a summary of the rationale supporting each proposed response;

(e) Any supportive documentation or research; and

(f) A statement indicating whether the requester currently is a party to another proceeding involving the questions at issue and whether, to the requester's knowledge or belief, each question has been decided by, is pending determination by, or is under investigation by any governmental entity or other entity with authority over a person or entity which the board governs or regulates.

Section 2. Consideration. (1) The chairperson of the board, or designee in writing, may schedule an informal meeting between the requester, any interested persons, and a representative of the board, to present information and discuss questions raised. A final decision shall not be made at an informal meeting.

(2) In rendering an advisory opinion, the board shall:

(a) Consider all materials submitted with the request;

(b) Consider any relevant document, data, or other material; and

(c) Consider comments from the board's staff.

(3) The board may:

(a) Consult experts or other individuals as it deems necessary; or

(b) Require argument of the question or permit the introduction of evidence.

Section 3. Issuance of Opinion or Refusal to Issue an Opinion. The board shall issue an advisory opinion in response to the request, unless one (1) of the following apply:

- (1) The board does not have jurisdiction over the questions presented in the request;
 - (2) The questions presented are pending in a disciplinary matter, or other board or judicial proceeding that may definitively decide the issues;
 - (3) The questions presented by the request would be more properly resolved in a different type of proceeding;
 - ~~(4) [(4)]~~ The facts or questions presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an opinion;
 - ~~(5) [(4)]~~ There is no need to issue an opinion because the questions raised in the request have been settled due to a change in circumstances;
 - ~~(6) [(5)]~~ The requester is asking the board to determine whether a statute is unconstitutional;
- or
- ~~(7) [(6)]~~ The board concludes an opinion would not be in the public interest.

Section 4. Publication of Advisory Opinions. (1) All advisory opinions shall be published and maintained by the KBEMS office. Publication shall be made by hard copy and by placing the entire opinion on the board-managed website.

(2) All names or references that may allow for the identification of parties shall be redacted from the formal, published advisory opinion.

(3) An index of all final, published advisory opinions shall be maintained by the KBEMS office. The index shall include the subject of each opinion, its publication date and any prospective changes that are effectuated by the published advisory opinions.

Section 5. Reconsideration and Appeals. (1) Any person may request the board to reconsider a published advisory opinion within ten (10) working days of the publication of the opinion.

(2) Requests for reconsideration shall meet the requirements of Section 1(2) of this administrative regulation.

(3) Requests for reconsideration shall contain:

(a) A clear and concise statement of the grounds for the reconsideration;

(b) The proposed conclusion with a summary of the rationale supporting the proposed conclusion;

(c) Any supportive statute, administrative regulation, document, order or other statements of law or policy, with an explanation of the relevance of the material offered; and

(d) A statement of adverse impact, if any, resulting from the published advisory opinion.

(4) Any notice of appeal to the Franklin Circuit Court filed pursuant to KRS 311A.055 shall be served upon the chairperson of the board, the executive director and the general counsel for the board. (30 Ky.R. 146; 1213; eff. 11-19-2003; Crt eff. 2-19-2019; TAm eff. 2-1-2021.)