

GENERAL GOVERNMENT CABINET
Kentucky Registry of Election Finance
(Amendment)

32 KAR 2:040. Investigatory procedures. ~~{Preconciliation procedures.}~~

RELATES TO: KRS ~~{21.120,}~~121.140

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to establish a procedure for ~~{processing complaints or internally-generated matters prior to the conciliation process established by Acts 1992, Chapter 288, Section 46 enacted by the General Assembly. The bill became effective July 14, 1992, and it is necessary to promulgate this administrative regulation to enable the registry to comply with the new provision.}~~investigations into complaints or internally-generated matters and is necessary to ensure a consistent procedure.

~~{Section 1.} {Reason to Believe Finding.}~~

~~{(1)} {If the general counsel, either after reviewing a complaint and a respondent's letter or memorandum requesting that the registry take no action on the complaint as provided in Section 3 of 32 KAR 2:030, or after reviewing an internally-generated matter as described in Section 5 of 32 KAR 2:030, determines there is reason to believe that a respondent may have violated or is about to violate a campaign finance statute or administrative regulation, he shall notify the respondent and complainant of his finding by letter, setting forth the sections of the statute or administrative regulation alleged to have been violated and the factual basis supporting the finding.}~~

~~{(2)} {If the general counsel finds no reason to believe that a violation occurred or otherwise terminates its proceedings, the general counsel shall so advise both the complainant and respondent by letter.}~~

Section 1. ~~{Section 2.}~~ Investigations.

(1) An investigation shall be conducted in any case in which the general counsel finds reason to believe that a violation of a campaign finance statute or administrative regulation may have occurred or is about to occur, or at the direction of the registry if the general counsel's recommendation of dismissal is rejected.

(2) In its investigation, the registry may utilize the provisions of Sections 3 to 7 of this administrative regulation. The investigation may include field investigations, audits, and other methods of information gathering.

Section 2. ~~{Section 3.}~~ Written Question Under Oath. The registry may authorize its chairman or general counsel to issue an order requiring any person to submit sworn written answers to written questions and may specify a date by which the answers shall be submitted.

Section 3. ~~{Section 4.}~~ Subpoenas; Depositions.

(1) The registry may authorize its chairman or general counsel to issue subpoenas requiring the attendance and testimony of any person by deposition or at a hearing. Further the registry may issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with an investigation, deposition, or a hearing.

(2) If oral testimony is ordered to be taken by deposition or documents are ordered to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be given under oath. A deposition may be taken before any person having the power to administer oaths.

(3) The Kentucky Rules of Civil Procedure, Rule 30.05, shall govern the opportunity to review and sign depositions taken pursuant to this section.

Section 4. ~~[Section 5.]~~ Service of Subpoenas, Orders, and Notifications.

(1) Service of a subpoena, order, or notification upon a person named therein shall be made by delivering a copy to that person in the manner prescribed by this section. ~~[In the case of subpoenas, fees for one (1) day's attendance and mileage shall be tendered as specified in Section 6 of this administrative regulation.]~~

(2) When service is to be made upon a person who has advised the registry of representation by an attorney, the service shall be made upon the attorney by any of the methods specified in subsection (3) of this section and a copy shall be sent to the individual.

(3)

(a) Delivery of subpoenas, orders, and notifications to a natural person may be made by:

1. Handing a copy to the person;
2. Leaving a copy at the person's~~[his]~~ dwelling place or usual place of abode with a person of suitable age and discretion residing therein;
3. Mailing a copy by registered or certified mail to the person's~~[his]~~ last known address; or
4. Any other method whereby actual notice is given.

(b) When the person to be served is not a natural person, delivery of subpoenas, orders, and notifications may be made by:

1. Mailing a copy by registered or certified mail to the person at its place of business;
2. Handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of the person;
3. Mailing a copy by registered or certified mail to the representative at the representative's~~[his]~~ last known address; or
4. Any other method by which actual notice is given.

~~[Section 6.] [Witness Fees and Mileage. Witnesses subpoenaed to appear for depositions shall be paid the same fees and mileage as witnesses in the courts of the Commonwealth of Kentucky. These fees may be tendered at the time the witness appears for the deposition or within a reasonable time thereafter.]~~

Section 5. ~~[Section 7.]~~ Motions to Quash or Modify a Subpoena.

(1) A person to whom a subpoena is directed may, prior to the time specified therein for compliance, but no later than five (5) days after the date of receipt of the subpoena, move the registry to quash or modify the subpoena, accompanying the motion with a brief statement of the reasons therefore. Motions to quash shall be filed with the general counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. ~~[Three (3) copies shall be submitted.]~~

(2) The registry may deny the motion, quash the subpoena, or modify the subpoena.

(3) The person subpoenaed and the general counsel may agree to change the date, time, or place of a deposition or the conditions for the production of documents without affecting the force and effect of the subpoena, but any modifications shall be confirmed in writing.

Section 6. ~~[Section 8.]~~ Briefing Procedures.

(1)

(a) Upon completion of the investigation, the general counsel shall make a report of the findings of the registry.

(b) If the registry determines that the information obtained in the course of the investigation is insufficient to support a finding of probable cause or to provide a basis

for dismissal of the action, it may direct the general counsel to prepare a brief setting forth his position on the alleged factual and legal issues of the case.

(c) The registry may also request the respondent to appear to present additional information, or the respondent may request ~~[that he]~~ be allowed to present additional evidence.

(d) The decision as to whether the respondent may present additional evidence shall be within the discretion of the registry.

(2) The general counsel shall provide a copy of ~~the~~~~[his]~~ brief to the respondent who may, within fifteen (15) days of receipt of the general counsel's brief, file a brief with the registry setting forth ~~the respondent's~~~~[his]~~ position on the factual and legal issues of the case. ~~[Ten (10) copies of the brief shall be filed with the executive director and three (3) copies shall be filed with the general counsel.]~~

Section 7. ~~[Section 9.]~~ Probable Cause Finding; Notification.

(1) If the registry determines that there is probable cause to believe that a respondent may have or is about to violate ~~[a]~~ campaign finance law, ~~[statute or administrative regulation,]~~ the general counsel shall notify the respondent and complainant by letter.

(2) If the registry finds no probable cause or otherwise orders a termination of its proceedings, the general counsel shall notify respondent and complainant by letter.

Section 8. ~~[Section 10.]~~ Noncompliance with Reporting Requirements; Probable Cause Determination.

(1) If any person subject to the provisions of KRS 121.180 fails to comply with any reporting requirement contained in that section, the failure to file a report due in a timely manner shall constitute prima facie evidence that probable cause exists to believe that a violation has occurred and the general counsel and executive director may immediately enter into conciliation negotiations with the respondent. The notice required by KRS 121.140(2) shall be issued when the registry's staff concludes that there has been a failure to file any report required under the campaign finance laws.

(2) If any a candidate or slate of candidates does not revoke a request for exemption in a timely manner as described in KRS 121.180(1)(b), making the candidate or slate of candidates subject to the \$500 penalty imposed in KRS 121.180(1)(k), the filing of an amended Statement of Spending Intent untimely or the reporting of the receipt of contributions or the expenditures of funds in excess of \$3,000 once the time to amend the Statement of Spending Intent has passed, shall constitute prima facie evidence that probable cause exists to believe that a violation has occurred and the general counsel and executive director may immediately enter into conciliation negotiations with the candidate or slate of candidates. The notice required by KRS 121.140(2) shall be issued when the registry's staff concludes that there has been a failure to timely amend a Statement of Spending Intent.

~~(3) [(2)]~~ A conciliation agreement pertaining to a violation of KRS 121.180 shall not be binding upon either party until it is signed by the respondent, the general counsel, and the executive director, and approved by the registry.

JOHN. R. STEFFEN, Executive Director

APPROVED BY AGENCY: July 6, 2023

FILED WITH LRC: July 10, 2023 at 8:30 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2023, at 10:00 a.m., at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to

attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2023, at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Leslie Saunders, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email LeslieM.Saunders@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Saunders

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation sets the process for the Registry's investigatory process once an enforcement matter begins by complaint or through an internal referral.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary because, while KRS 121.140 contemplates a complaints process and addresses some of the investigatory powers the registry processes in processing complaints, the statute describes no procedures for doing with any detail.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 121.120(1)(g) grants the registry the authority to "promulgate administrative regulations necessary to carry out the provisions of this chapter[.]"

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

It sets procedures for the regular investigation of complaints.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment removes a portion of duplicated regulation that is covered by the previous administrative regulation (where the subject matter fits better). It also removes the requirement that the state pay witness fees and the requirement that the respondent send multiple copies of the documents to the Registry, which it no longer needs. Finally, it adds a second violation related to late filing that can go to conciliation immediately, like other forms of late filing.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to remove impediments to the complaint investigation process, such as witness fees to which the agency should not be subject and costs associated with copies of documents which the Registry now receives no benefit from the public incurring. It also removes what had been redundant language between 32 KAR 2:030 and 32 KAR 2:040 and treats similar violations in a similar manner.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 121.140 provides broad overview of the complaint process, including a process of the registry's investigatory powers, however does not provide any specific guidance. This regulation will provide that specificity.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment will provide further guidance on how the registry investigates complaints received and will streamline several steps in the process that no longer reflected agency needs or had been changed by amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Anyone who wishes to file a complaint or is a respondent to a complaint received by the registry is affected, as well as anyone who might be a witness the board meeting or hearing related to an enforcement matter.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Regulated entities will no longer be required to file multiple copies of the same document and will enter into conciliation immediately if a Statement of Spending Intent is amended late, as opposed to having the matter heard at a meeting before the Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Entities will incur no costs in complying, with the exception that the state will no longer pay witness expenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Compliance will make the process less burdensome for the entities because they no longer have to file multiple copies of documents (that the Registry no longer uses but are still in the regulatory language) and they will no longer be required to participate in a board hearing before going to conciliation for a violation that is similar to the less burdensome delinquency process.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There will be no initial cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis:

There will be no cost on a continuous basis to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

While no additional funding will be required for the implementation and enforcement of this administrative regulation, the administrative body operates solely on General Funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

It will not be necessary to increase fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No.

(9) TIERING: Is tiering applied?

This administrative regulation does not apply tiering because the underlying statute sets out one complaint and investigation procedure in KRS 121.140 that is applicable

in the same manner to all respondents, complainants, witnesses, etc.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Kentucky Registry of Election Finance

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 121.120 and KRS 121.140

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This administrative regulation will not generate revenue for subsequent years.

(c) How much will it cost to administer this program for the first year?

This program will not cost any additional amount to administer for the first year.

(d) How much will it cost to administer this program for subsequent years?

This program will not cost any additional amount to administer for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

This administrative regulation will not generate any cost savings for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

This administrative regulation will not generate any cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year?

This administrative regulation will not cost the regulated entities anything for the first year.

(d) How much will it cost the regulated entities for subsequent years?

This administrative regulation will not cost the regulated entities anything for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

, “Major economic impact” means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation will not have a major economic impact.