

GENERAL GOVERNMENT CABINET
Kentucky Registry of Election Finance
(Amendment)

32 KAR 2:060. Advisory opinions.

RELATES TO: KRS 121.135

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.135 requires the Registry of Election Finance to issue advisory opinions concerning the application of campaign finance laws or administrative regulations promulgated by the registry pursuant to statutory authority. These provisions became effective July 14, 1992, and this administrative regulation is necessary to implement the process through which advisory opinions may be requested and issued.

Section 1. Requests for Advisory Opinions.

(1) A person may request in writing an advisory opinion concerning the application of campaign finance statutes or administrative regulations with regard to a particular transaction. An authorized agent of the person requesting an advisory opinion may submit the advisory opinion request, but the agent shall disclose the identity of ~~the~~his principal.

(2) The written advisory opinion request shall describe a specific transaction or activity that the requesting person plans to ~~undertake; undertake or~~ is presently undertaking; ~~or undertaking and~~ intends to undertake in the future. Requests presenting a general question of interpretation, ~~for~~ posing a hypothetical situation, or regarding the activities of third ~~parties~~parties, shall not be considered.

(3) Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.

(4) The office of general counsel shall review all requests for advisory opinions submitted to the registry. If the office of general counsel determines that a request is incomplete or otherwise fails to meet the criteria established in this section, it shall, within ten (10) calendar days of receipt of the request, notify the requesting ~~person~~person, of any deficiencies in the request.

(5) Advisory opinion requests shall be submitted by mail to the Office of the General Counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601; or by email to KREFRequests@ky.gov.~~[Kentucky 40601.]~~

(6) Upon receipt by the registry, each request which qualifies as an advisory opinion request (AOR) under this section shall be assigned an AOR number for reference purposes.

Section 2. Public Availability of Requests. (1) The registry shall make public on its Web site at www.kref.ky.gov any advisory ~~[Advisory]~~ opinion requests ~~that~~which qualify under Section 1 of this administrative regulation ~~[shall be made public at the registry]~~ promptly upon receipt. A register shall be maintained by the registry containing a list of requests for advisory opinions and shall be updated on a regular basis.~~[The register, copies of all requests for advisory opinions, supplemental materials, and copies of all opinions issued shall be available for public inspection at the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. local time.]~~

Section 3. Written Comments on Request.

(1) Any interested person may submit comments concerning requests for advisory opinions made public ~~to~~by the registry. All comments shall be in writing and shall refer

to the AOR number of the request.

(2) Written comments shall be submitted not later than ten (10) calendar days following the date the request is made public by the registry. If the tenth day falls on a Saturday, Sunday, or legal holiday, the ten (10) day period shall expire at the close of the following business day.~~[day next following.]~~

(3) The registry may grant additional time to submit written comments at the Office of General Counsel's discretion or if a member of the public wishing to submit comments requests it. ~~[Additional time for submission of written comments may be granted upon written request for an extension by the person who wishes to submit comments or may be granted in the discretion of the Office of General Counsel without a request.]~~

(4) Written comments and requests for additional time to comment shall be sent to the Office of General Counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky, 40601; or by email to KREFRequests@ky.gov.

(5) Before issuing an advisory opinion, the registry shall accept and consider all written comments submitted within the ten (10) day comment period or any extension of the normal comment period.

~~[Section 4.] [Issuance of Advisory Opinions. Advisory opinions shall be issued by the registry as provided in KRS 121.135(2).]~~

~~[Section 5.] [Reliance on Advisory Opinions. An advisory opinion issued by the registry may be relied upon only as provided in KRS 121.135(4).]~~

~~[Section 6.] [Advisory Opinion Subscription Service Available. Copies of all advisory opinions issued by the Registry of Election Finance shall be made available to interested parties through a per page charge of ten (10) cents per page plus postage. Persons wishing to obtain a copy of an advisory opinion may contact the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 564-2226.]~~

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, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation sets the process for requesting advisory opinions, which the registry is required to answer by KRS 121.135.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary because, while KRS 121.135 contemplates an advisory opinion request process, 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 handling of advisory opinion requests.

(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 allows for the making of advisory opinion requests and public comments by email, in addition to the US mail option that was already in the statute. It also recognizes that the requests and comments are being made available through the registry's Web site and there is no longer a need for a copying procedure. In the rare instance that someone would rather have paper copies of the material, charges and the like are already covered by the registry's open records process. It also replaces gender-specific language with gender neutral language and cleans up some convoluted language and grammatical errors.

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

This amendment is necessary to recognize that registry has changed how it posts and provides copies of advisory opinions, requests, and comments, making them more efficient, and at times cheaper, to the public to engage in the process.

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

KRS 121.135 provides no requirements for the advisory opinion process, save that they be in writing, they are available to the public for comment, and that the registry make the response within 20 or 30 days depending on the date of the next election.

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

This amendment allows the requestors and commenters to communicate with the registry by email, if preferred and points to the location of the requests and related documents on the Registry's Web site, which is not mentioned in the current version of 32 KAR 2:060.

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

Anyone who wishes to request an advisory opinion or comment on one is affected.

(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 use this regulation to deliver their requests and comments to the registry and to view copies of those already filed.

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

The entities will incur no costs in complying unless they request hard copies of the documents and then will be subject to the normal costs for open records requests.

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

Compliance will allow for the orderly processing and response to advisory opinion requests before the registry.

(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 it would aid neither the agency nor the regulated population to set up separate processes based on the size of the requestor or the number of requests made. KRS 121.135 envisions a standard advisory opinion request process that would not depend on the entity of the requestor.

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 121.135

(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.