

1 AN ACT relating to legislative ethics.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 6.681 is amended to read as follows:

4 (1) The commission may render advisory opinions concerning matters under its  
5 jurisdiction, based upon real or hypothetical circumstances, when requested by:

6 (a) Any person covered by this code;

7 (b) Any person who is personally and directly involved in the matter; or

8 (c) The commission upon its own initiative.

9 (2) (a) An advisory opinion shall be requested in writing and shall state relevant facts  
10 and ask specific questions. The request for the advisory opinion shall remain  
11 confidential unless confidentiality is waived, in writing, by the requestor.

12 (b) No less than ten (10) days prior to the meeting in which the commission is  
13 scheduled to consider an advisory opinion, the commission shall provide a  
14 draft of its proposed response to the advisory opinion request to the  
15 requestor and each commissioner. The requestor may appear personally,  
16 with or without counsel, before the commission in closed session to provide  
17 comment on the draft of the proposed response prior to the commission's  
18 vote on the request.

19 (3) Advisory opinions shall be based on the Kentucky Revised Statutes as written and  
20 shall not be based on the personal opinions of commission members as to  
21 legislative intent or the spirit of the law.

22 (4) The commission shall promulgate administrative regulations to establish criteria  
23 under which it may issue confidential advisory opinions. All other advisory  
24 opinions shall be published except that before an advisory opinion is made public, it  
25 shall be modified so that the identity of any person associated with the opinion shall  
26 not be revealed.

27 (5) The confidentiality of an advisory opinion may be waived either:

- 1 (a) In writing by the person who requested the opinion; or
- 2 (b) By majority vote of the members of the commission, if a person makes or
- 3 purports to make public the substance or any portion of an advisory opinion
- 4 requested by or on behalf of the person. The commission may vote to make
- 5 public the advisory opinion request and related materials.
- 6 (6) (a) A written advisory opinion issued by the commission shall be binding on the
- 7 commission in any subsequent proceeding concerning the facts and
- 8 circumstances of the particular case if no intervening facts or circumstances
- 9 arise which would change the opinion of the commission if they had existed at
- 10 the time the opinion was rendered. However, if any fact determined by the
- 11 commission to be material was omitted or misstated in the request for an
- 12 opinion, the commission shall not be bound by the opinion.
- 13 (b) A written advisory opinion shall be admissible in the defense of any criminal
- 14 prosecution or civil proceeding for violations of this code for actions taken in
- 15 reliance on that opinion.

16 ➔Section 2. KRS 6.686 is amended to read as follows:

- 17 (1) (a) The commission shall have jurisdiction to investigate and proceed as to any
- 18 violation of this code upon the filing of a complaint. The complaint shall be a
- 19 written statement alleging a violation against one (1) or more named persons
- 20 and stating the essential facts constituting the violation charged. The
- 21 complaint shall be made under oath and signed by the complaining party
- 22 before a person who is legally empowered to administer oaths. The
- 23 commission shall have no jurisdiction in the absence of a complaint. A
- 24 member of the commission may file a complaint.
- 25 (b) Within ten (10) days of the filing of a complaint, the commission shall cause a
- 26 copy of the complaint to be served by certified mail upon the person alleged
- 27 to have committed the violation.

1 (c) Within twenty (20) days of service of the complaint the person alleged to have  
2 committed the violation may file an answer with the commission. The filing  
3 of an answer is wholly permissive, and no inferences shall be drawn from the  
4 failure to file an answer.

5 (d) 1. Not later than ten (10) days after the commission receives the answer, or  
6 the time expires for the filing of an answer, the commission shall  
7 ~~*determine*~~~~[initiate a preliminary inquiry into any alleged violation of~~  
8 ~~this code. If the commission determines]~~ upon the affirmative vote of at  
9 least five (5) members, at either a regularly scheduled meeting, or a  
10 teleconference meeting called upon the chair's oral or written notice to  
11 all members of the commission, ***whether there is reason to believe the***  
12 ***person named in the complaint has committed or is about to***  
13 ***commit***~~[that the complaint fails to state a claim of] an ethics violation~~],~~  
14 ~~the complaint shall be dismissed].~~~~

15 2. ***If the commission determines that there is reason to believe the person***  
16 ***named in the complaint has committed or is about to commit a***  
17 ***violation of this code, upon an affirmative vote of at least five (5)***  
18 ***members, the commission shall initiate a preliminary inquiry into the***  
19 ***alleged violations pursuant to subsections (3) to (5) of this section. A***  
20 ***determination by the commission under this subparagraph:***

21 a. ***Means that the commission believes that the alleged violation***  
22 ***merits further inquiry, and the commission shall proceed with its***  
23 ***inquiry and investigation; and***

24 b. ***Is not a finding that a person named in a complaint has violated***  
25 ***this code.***

26 3. ***If the commission fails to determine by an affirmative vote of at least***  
27 ***five (5) members that there is reason to believe the respondent has***

1                                    *committed or is about to commit a violation of this code, the complaint*  
2                                    *shall be dismissed.*

- 3            (e) Within thirty (30) days of the commencement of the inquiry, the commission  
4            shall give notice of the status of the complaint and a general statement of the  
5            applicable law to the person alleged to have committed a violation.
- 6            (f) A complaint may be filed against a former legislator, a former legislative  
7            agent, or a former employer of a legislative agent within one (1) year of the  
8            date he or she left office or terminated lobbying registration. The one (1) year  
9            limitation shall not apply if a complaint alleges a violation of KRS 6.757.
- 10          (g) The applicable criminal statutes of limitation shall not apply to ethical  
11          misconduct under KRS 6.601 to 6.849.
- 12          (2) All commission proceedings, including the complaint and answer and other records  
13          relating to a preliminary inquiry, shall be confidential until a final determination is  
14          made by the commission, except:
- 15                (a) The commission may turn over to the Attorney General, the United States  
16                Attorney, Commonwealth's attorney, or county attorney of the jurisdiction in  
17                which the offense allegedly occurred, evidence which may be used in criminal  
18                proceedings; and
- 19                (b) If the complainant or alleged violator publicly discloses the existence of a  
20                preliminary inquiry, the commission may publicly confirm the existence of  
21                the inquiry and, in its discretion, make public any documents which were  
22                issued to either party.
- 23          (3) The commission shall afford a person who is the subject of a preliminary inquiry an  
24          opportunity to appear in response to the allegations in the complaint. The person  
25          shall have the right to be represented by counsel, to appear and be heard under oath,  
26          and to offer evidence in response to the allegations in the complaint.
- 27          (4) If the commission determines by the answer or in the preliminary inquiry that the

1 complaint does not allege facts sufficient to constitute a violation of this code, the  
2 commission shall immediately terminate the matter and notify in writing the  
3 complainant and the person alleged to have committed a violation. The commission  
4 may confidentially inform the alleged violator of potential violations and provide  
5 information to ensure future compliance with the law. If the alleged violator  
6 publicly discloses the existence of such action by the commission, the commission  
7 may confirm the existence of the action and, in its discretion, make public any  
8 documents that were issued to the alleged violator.

9 (5) If the commission, during the course of the preliminary inquiry, finds probable  
10 cause to believe that a violation of this code has occurred, the commission shall  
11 notify the alleged violator of the finding, and the commission may, upon majority  
12 vote:

13 (a) Due to mitigating circumstances such as lack of significant economic  
14 advantage or gain by the alleged violator, lack of significant economic loss to  
15 the state, or lack of significant impact on public confidence in government,  
16 confidentially reprimand, in writing, the alleged violator for potential  
17 violations of the law and provide a copy of the reprimand to the presiding  
18 officer of the house in which the alleged violator serves, or the alleged  
19 violator's employer, if the alleged violator is a legislative agent. The  
20 proceedings leading to a confidential reprimand and the reprimand itself shall  
21 remain confidential except that, if the alleged violator publicly discloses the  
22 existence of such an action, the commission may confirm the existence of the  
23 action and, in its discretion, make public any documents which were issued to  
24 the alleged violator; or

25 (b) Initiate an adjudicatory proceeding to determine whether there has been a  
26 violation.

27 (6) Any person who knowingly files with the commission a false complaint of

1           misconduct on the part of any legislator or other person shall be guilty of a Class A  
2           misdemeanor.