

ETHICS ACT REVIEW

SUBCOMMITTEE REPORT

*General Government & Social
Services Committee*

July 11, 2017

Subcommittee Members:

Evans, Chair
Bledsoe
Lamb
Moloney
Scutchfield



LEXINGTON

Review

- The Ethics Act Review Subcommittee met over a period of 16 months and received input from The Ethics Commission, Law Department and Council Clerk's Office.
- Councilmember Evans gave a report out of the subcommittee on July 5, 2016. No action was taken and Committee was awaiting final comments from The Ethics Commission.
- At its creation, the subcommittee was charged with reviewing the Ethics Act, specifically issues of:
 - Modifying the Nominating Process for Ethics Commission members
 - Expanding the Financial Disclosure requirement for LFUCG Boards & Commissions
 - Policy Impacting Domestic Partnerships, including Nepotism & Disclosure Misconduct, Compliant Processes, Hearing Procedures, etc.
 - Lobbyist Registration /Transparency



Declarations

The title of Sec 25-2 was changed to “Declarations” and Sec 25-2.1 was added to clarify the purpose of the Ethics Act. (Draft, Pg. 1)

Sec. 25-2 Declarations

- (1) The proper operation of democratic government required that public officials and employees be independent, impartial, and responsible to the people; that government decisions and policy be made in the best interests of the people, the community, and the government; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, the following code of ethics shall apply to all officers and employees of the Merged Government, whether elected or appointed, paid or unpaid, and to officers and employees of other independent agencies where so provided by special laws applicable to such other independent agencies.

Definitions

Agency

The definition was expanded to align with KRS Chapter 65, to include Special Purpose Governmental Entities. (Pg. 2, Draft Ordinance)

Qualifying Adult Language

Qualifying Adult was added to the definition of Family Member in Sec. 25-4.7 and defined in Sec. 25-4.12. The change was made to include committed long-term partnerships, similar to language in LFUCG healthcare plan. Employees subject to Ethics Act will be required to include life partners in financial statements and are subject to the nepotism prohibition, referenced in Sec. 25-19.1. (Pg. 3, Draft Ordinance)

Definitions Continued...

Financial Interest

Definitions of financial interest and private interest were added to Sec 25-4 to clarify for officers, employees and the public, the different types of interests subject to the Ethics Act. (Pg. 3, Draft Ordinance)

Sec 25-4.8

- (8) Financial Interest means a right, title, legal or equitable share in an asset or transaction which (a) will result in an increase or decrease in the income or net worth of an officer or family member or an officer which does not arise from a primary or proximate action by an officer or a family member of an officer or (b) where either no or only a de minimis benefit accrues to an officer or a family member of an officer.



Definitions Continued...

Private Interest

Private Interest was added to provide more transparency about the interests officers and employees have in issues before them. (Pg. 3, Draft Ordinance)

Sec 25-4.12

(11) Private Interest means employment, board membership, or participation in the management and/or operations of an entity by an officer or family member of an officer.

Impact:

Private interests will be required to be reported in a financial statement or before voting.

Conflict of Interest

In an effort to explain what is NOT a conflict of interest, Sec. 25-5 was added. (Draft, Pg. 5)

Sec 25-5

- (5) No officer or employee shall be deemed in conflict with these provisions if, by reason of participation in the enactment of any ordinance, resolution or other matter required to be voted upon, **no financial gain accrues to such officer to any greater extent than any other member of such business, profession, occupation or group.**

Impact:

If the officer or employee's benefit doesn't exceed anyone else's benefit in that group, it is NOT a conflict.

The Ethics Commission was concerned about using the term "member" in the definition, due to it having a legal definition as it related to business. The term "individual" could be substituted for the word "member".

Conflict of Interest Continued...

Sec 25-5

- (6) No officer or employee shall be deemed in conflict with these provisions if, by reason of participation in the enactment of any ordinance, resolution or other matter required to be voted upon, no financial gain is conferred upon **a non-profit or charitable organization** in which the officer, employee or family member has a financial or private interest **if the officer or employee has disclosed said association to one of the following:**
- (a) The ethic commission through his or her statement of financial interest or a supplementary statement of financial interest;
 - (b) The clerk of the urban county council or the secretary of the voting board prior to casting such vote. For purposed of this section, an officer or a member of his or her family who makes a donation to such organization shall not be considered a financial interest or private interest.

Impact:

An officer or employee with a private or financial interest in a non-profit will NOT be in violation of the Ethics Act if s/he discloses his/her association with the organization on financial interest statement or prior to voting.

Official Misconduct

At the recommendation of the Ethics Commission, a definition of official misconduct was added in Sec. 25-5.2. (Draft, Pg. 7)

Sec 25-5.2

An officer or employee commits misconduct when, in his or her official capacity, he or she commits any of the following acts:

- (1) Intentionally or recklessly fails to perform any mandatory duty required by law;
- (2) Knowingly performs an act which he or she knows is forbidden by law to perform;
- (3) With intent to obtain personal advantage for him or herself or another, perform an act in excess of his or her lawful authority; or
- (4) Solicits or knowingly accepts for the performance of any act a fee or reward that he or she knows is not authorized by law.

Impact:

Provides explanation of behavior that is in violation of Ethics Act.

Penalties

Sec 25-30.1-2 (Draft, Pg.24-25)

- (1) Upon a determination by the ethics commission of a violation of any of the provisions of the Ethics Act by an officer or employee, the ethics commission shall impose one or more of the following penalties:
 - (a) For any **unintentional** violation which has been **voluntarily corrected** by the officer or employee prior to any action by the ethics commission, a notice of mootness shall be issued by the commission;
 - (b) For any violation which is determined by the ethics commission to have been **unintentional or the result of good faith misinterpretation** of the requirements of the Ethics Act, a letter of technical violation or a letter of **reprimand** shall be issued by the the commission as the commission deems appropriate;
 - (c) For any **intentional** violation which is acknowledged and rectified by the officer or employee prior to any action by the ethics commission, the commission may take the following actions:
 - (i) Issue a letter to cease and desist;
 - (ii) Issue a letter of public reprimand;
 - (iii) Issue a letter of formal censure;
 - (iv) Issue a recommendation to the council, the mayor, or the civil service commission for removal, training or remediation.

(2) In addition to any penalties set forth under subsection (c), an intentional violation of the Ethics Act shall be subject to the criminal penalties imposed by a court of competent jurisdiction pursuant to KRS 522.020 and KRS 522.030.

Impact:

Language was included to reflect an individual's intent and the inclusion of specific penalties (Sec. 25-30-1(c)).



Nomination of Commission Members

The section was reviewed to consider options to address the concerns of organizations struggling to find nominees from their membership.

Organizations outlined in Sec 25.20(2) were eliminated and replaced with broad categories reflecting demographics of the current organizations. (Draft, Pg. 14-15)

Impact:

Administration will have sole responsibility of seeking candidates, will potentially have faster appointments, but eliminates initial intent of citizen involvement in nomination process.



Questions?