I. LEGISLATIVE INDEPENDENCE EVOLVES FROM THE STRICT SEPARATION OF POWERS DOCTRINE IN KENTUCKY'S CONSTITUTION

A. Strict Separation of Powers -- Kentucky Constitution, Sections 27 and 28

Sibert v. Garrett, 246 S.W. 455 (Ky. 1922)
The court held the legislature lacked the authority to appoint members of an executive branch commission, and under the separation of powers provision of the Kentucky Constitution the task of appointing members to the highway commission was the responsibility of the governor.

Rouse v. Johnson, 28 S.W.2d 745 (Ky. 1930)
The court said the state Constitution, unlike the federal one, only prescribes inhibitions and limitations upon legislative power, and unless the legislative body is so proscribed and limited by the Constitution, its authority is unlimited and it may enact upon any subject.

Arnett v. Meredith, 121 S.W.2d 36 (Ky. 1938) 
The Governor's exercise of the veto power conferred upon him by the state's Constitution is a legislative act and involves an encroachment by the executive department upon the functions of the legislative department, and it is one of the excepted "instances hereinafter expressly directed or permitted," as contained in Ky. Const. §28.

Legislative Research Commission v. Brown, 664 S.W.2d 907 (Ky. 1984)
The General Assembly enacted laws giving new powers to the Legislative Research Commission (LRC). The Governor and Attorney General brought this action to declare the statutes unconstitutional. The Supreme Court found certain of the statutes unconstitutional because they purported to create a fourth branch of government and served to keep the General Assembly "in session" following adjournment. Statutes which allowed for LRC veto of proposed regulations violated Ky. Const. §§ 27-28 as a legislative encroachment into executive power. Statutes which gave the legislature power over appointments violated the governor's power to make appointments. A statute which required each branch of government to submit a budget reduction plan was not unconstitutional. A statute giving LRC veto power over executive department reorganization was unconstitutional. The Court held that statutes which usurped or frustrated the executive's constitutional authority were unconstitutional. LRC was recognized as a constitutional agency of the legislative branch, but could not serve as a fourth branch of government.

Commonwealth ex rel. Cowan v. Wilkinson, 828 S.W.2d 610 (Ky. 1992) 
Ky. Const. §27 provides that the powers of government be divided into three distinct units: executive, legislative and judicial. The establishment of public policy is granted to the legislature alone. It is beyond the power of a court to vitiate an act of the legislature on the
grounds that public policy promulgated therein is contrary to what the court considers to be in the public interest. It is the prerogative of the legislature to declare that acts constitute a violation of public policy.

**Kraus v. Kentucky State Senate**, 872 S.W.2d 433 (Ky. 1993)
The court held that the Senate had the inherent power to advise and consent on executive branch appointments of inferior state officers. Ky. Const. §43 provided legislative immunity from suits concerning speech or debate, and the court held that this provision extended to voting on executive appointments.

**Fletcher v. Commonwealth ex rel. Stumbo**, 163 S.W.3d 852 (Ky. 2005)
After the General Assembly adjourned without enacting an executive branch budget bill for the 2004-06 biennium, the Governor formulated an executive branch spending plan. The issue was whether the Governor could order money drawn from the treasury to fund the operations of the executive branch of government if the General Assembly failed to appropriate funds for that purpose. The Supreme Court held the Governor could not do so. Kentucky is a strict adherent to the separation of powers doctrine pursuant to Ky. Const. §§27 and 28, and in the absence of a specific appropriation or a statutory, constitutional, or federal mandate, the unambiguous language of Ky. Const. §230 prohibited the withdrawal of funds from the state treasury. The Governor had no constitutional authority to exercise legislative powers even when the General Assembly failed to do so. The Governor possessed no "emergency" or "inherent" powers to appropriate money from the treasury that the General Assembly, for whatever reason, had not appropriated.

**B. Legislative power vested in General Assembly**

**Wiggins v. Stuart**, 671 S.W.2d 262 (Ky. App. 1984)
The court found that Ky. Const. §43 provided immunity to legislators from civil or criminal actions for acts committed or statements made in their official capacity. The court found that immunity not only applied to speech and debate, but to voting, reporting, and every act in the execution of their legislative duties.

**Immunity may not apply in a criminal investigation into a legislator’s actions:**

**United States v. Renzi**, 729 F.3d 731 (9th Cir. 2014)
Former U.S. Rep. Rick Renzi of Arizona was convicted on 17 federal corruption charges. His conviction was upheld by the 9th Circuit Court of Appeals.

Renzi included property owned by one of his associates in a federal land transfer bill, with the proceeds from that transaction secretly going to pay off a $700,000 debt to Renzi.

During the FBI’s investigation of Renzi, federal agents secretly taped his phone calls, including conversations involving lawmakers not targeted in the probe. Renzi’s lawyers challenged the use of the FBI-recorded phone calls on the grounds the Justice Department had violated the Speech or Debate Clause, a constitutional privilege that prevents lawmakers and staffers from facing legal action over official legislative acts.

The 9th Circuit held that Renzi was not impermissibly questioned about his legislative acts in violation of the Speech or Debate Clause. “... the Supreme Court has made equally clear
that the Speech or Debate Clause does not make members of Congress supercitizens immune from criminal responsibility."

**Rose v. Council for Better Education**, 790 S.W.2d 186 (Ky. 1989)

Students and local school districts filed a declaratory judgment action against the General Assembly in which plaintiffs alleged that state’s system of school financing resulted in an inefficient system of common school education in violation of Ky. Const. §183.

The Supreme Court held that the state’s school finance system created and funded by the General Assembly was unconstitutional. The Court said the evidence clearly demonstrated that the General Assembly had not met its constitutional mandate to enact legislation to provide for an efficient system of common schools throughout the state.

The Court recognized that the judiciary has no authority to order the General Assembly to enact specific legislation, or to exercise “supervision” over the actions of the General Assembly.

**Philpot v. Patton**, 837 S.W.2d 491 (Ky. 1992)

Two Senators asserted that Senate Rule 48 violated Ky. Const. §46 and sought an order to require committee action on legislation the Senators introduced. The Supreme Court held the controversy was moot because the legislative session in which Senate Rule 48 was enacted and in which the senators introduced the legislation had adjourned. The court also held that due to the provisions of Ky. Const. §46, a rule that allowed a committee’s final meeting to occur without reporting a bill would have been subject to a judicial challenge.

**Baker v. Fletcher**, 204 S.W.3d 589 (Ky. 2006)

State employees requested declaratory and injunctive relief against the Governor, after a failure to enact a comprehensive balanced budget appropriating revenues to fund the Executive Branch occurred. The result of the alleged failure was that the Governor issued an executive order giving state employees a 2.7 percent raise despite the fact that they were entitled to at least a five percent increment pursuant to KRS 18A.355. The Supreme Court held that the Governor did not have the power to suspend statutes but that the General Assembly had such a power. Moreover, the Court found that the General Assembly could retroactively suspend statutes, pursuant to KRS 446.080(3), if the legislature clearly manifested its intent to do so and the evidence showed that the General Assembly had intended such a result by the language it used in bills that it passed regarding the budget.

**Cameron v. Beshear, et al.**, 628 S.W.3d 61 (Ky. 2021)

Governor and Cabinet secretary requested declaratory and injunctive relief preventing enforcement of legislation pending adjudication of its constitutionality, arguing that the legislation undermines state government’s ability to respond to ongoing COVID-19 pandemic, creating a public health crisis that will result in increased disease and death. The Supreme Court held that the General Assembly is the policy-making body for the Commonwealth, not the Governor or the Courts. The Court also found that the trial court abused discretionary authority by issuing a temporary injunction to suspend enacted legislation which restricted the Governor’s ability to take unilateral action during declared emergencies.
C. BOPTROT and its legacy

"Operation BOPTROT" was the FBI’s name for a serious investigation of public corruption in Kentucky. From the beginning of the investigation in 1990 until the case was closed in 1995, the federal government secured 21 convictions, including 15 from legislators.

The name "BOPTROT" came from the investigation’s initial focus on the General Assembly’s Business Organizations and Professions (BOP) committees and legislation concerning harness tracks, where horses known as trotters race.

The investigation began after the FBI was notified that a state senator who was leaving office and looking for lobbying work told a harness track official that she could “fix” legislation that harness track officials didn't like for $100,000. Using cooperating witnesses and wiretaps, the FBI spent the next 18 months secretly uncovering wrongdoing, such as lawmakers accepting cash payments from lobbyists. The investigation revealed that corruption was behind some of the most heavily debated pieces of legislation that had recently been before the General Assembly. Although the investigation initially focused on harness racing issues, it grew over time to uncover wrongdoing related to a banking issue as well as plans for a health care company’s expansion.

The investigation became known to the public in 1992 when a lobbyist who had agreed to cooperate after being confronted by the FBI began to tell others about the case. On March 31, 1992, toward the end of the 1992 General Assembly, dozens of FBI agents descended on the State Capitol, issuing subpoenas, gathering information from potential witnesses, and collecting documents.

Guilty pleas were offered quickly from most of those indicted in Operation BOPTROT. Those who went to court were convicted. Charges ranged from extortion to racketeering to lying to the FBI.

Among the convictions resulting from the BOPTROT case were those against:

- A House Speaker, convicted of extortion, racketeering and lying to the FBI;
- A Senate Minority Leader, convicted on charges that he agreed to accept profits for his help in passing a banking bill;
- 13 other legislators and a top legislative staffer, convicted of a variety of crimes;
- The state’s "dean" of lobbyists and former chairman of the Kentucky Harness Racing Commission, convicted of accepting bribes.

To examine its practices and recommend changes, the General Assembly established a Task Force on Governmental Ethics and in 1993, lawmakers approved a sweeping legislative ethics reform package.

The reform plan included provisions to:

- Require the registration of lobbyists, as well as detailed reports on lobbyists' expenditures and actions.
• Limit the amount of food and drink lawmakers can receive from lobbyists and prohibit most gifts.
• Prohibit lobbyists from making campaign contributions to legislative candidates.
• Prohibit lawmakers from becoming lobbyists for two years after serving in the General Assembly.
• Require more detailed financial disclosures from lawmakers to reveal possible conflicts of interest.
• Create the Kentucky Legislative Ethics Commission - made up of non-legislators - to enforce the new ethics rules.

The ethics reforms prompted by BOPTROT were among the strongest in the nation and have been credited with changing the political culture in Kentucky's Capitol.

II. CODE OF LEGISLATIVE ETHICS -- KRS 6.601 TO 6.849

Associated Industries v. Commonwealth, 912 S.W.2d 947 (Ky. 1995)
Business association initiated declaratory judgment against attorney general and state ethics officials, contending that various legislative and executive ethics codes were unconstitutionally vague or overbroad. The Supreme Court determined that legislative and executive ethics statutes were neither overly broad nor violative of AIK's freedom of association under Ky. Const. Sec.1 or U.S. Const. Amend. I. The court held that under the strict scrutiny test, rights of association and petition can yield to a compelling governmental interest such as insuring the proper operation of government and deterring corruption, as well as the appearance of corruption.

Legislator and legislative candidate sued state ethics commission, alleging the ban on gifts from lobbyists to legislators or legislative candidates, ban on campaign contributions from lobbyists to legislators and legislative candidates, and ban on legislative agents soliciting campaign contributions for legislators and legislative candidates were unconstitutional. Following the District Court's holding that these provisions were unconstitutional, the Sixth Circuit reversed and held that the First Amendment was not violated by these provisions.

A. General standards of conduct for legislators -- KRS 6.731

A legislator, by himself or through others, shall not intentionally:

1. Use or attempt to use influence as a legislator in any matter involving substantial conflict between his personal interest and his duties in the public interest (Class A Misdemeanor)

OLEC 95-12: A legislator whose employer seeks to obtain a service contract with a state agency may not serve as his employer's representative in negotiations or otherwise engage in negotiations with the state agency. A legislator should be wary of potential conflicts in his private employment and personal interest and his duties in the public interest.

Rep. Randy Davis indicted on bribery charges
ALABAMA
Rep. Randy Davis, of Daphne, was indicted on charges of conspiracy and bribery over what prosecutors describe as an attempt to pressure Blue Cross Blue Shield to cover insulin therapies offered in health clinics in which he had a financial interest.

The clinics, operated by Trina Health, offered an intravenous insulin treatment for diabetes that insurers stopped covering following a decision from the federal Centers for Medicare and Medicaid Services.

The indictment accuses Davis of working with former Rep. Micky Hammon, Decatur, to push a bill through the 2016 session of the Alabama Legislature that would have forced coverage of the insulin treatment offered at the clinics. Hammon pleaded guilty to two counts of mail fraud last year and was sentenced to three months in a federal prison.

The 57-page indictment outlines both Hammon and Davis’ alleged involvement in Trina Health, and also a wildly improbable attempt to pressure Blue Cross Blue Shield, the state’s dominant insurer and a major political force, into reversing a coverage decision. The U.S. Attorney’s Office for the Middle District of Alabama, which brought the charges, said defendants could see a maximum of 10 years in prison.

2. Use official position or office to obtain financial gain for himself, any members of his family, or a business associate of the legislator (Class D Felony)

OLEC 93-19, 01-03: A legislator may not use his or her official legislative stationery for private business correspondence whether the stationery is paid for with public or private money. Depending on the surrounding circumstances, a private business communication on official legislative stationery could well fall within the proscriptions of KRS 6.731(2) or (3). The effect of the use of the official stationery for private business is the same regardless of who pays for the stationery.

Skelos, ex-New York Senate leader, gets four years and three months in prison
NEW YORK

Dean G. Skelos, the former New York Senate majority leader who wielded sweeping power in the Legislature for nearly a decade, was sentenced to four years and three months in prison for corruption.

Sen. Skelos had forged a formidable reputation in New York politics as one of the “three men in a room” who largely controlled decision-making in Albany. The trio also included Sheldon Silver, former speaker of the State Assembly, who was also convicted of corruption in a separate retrial this year; and Gov. Andrew Cuomo, who has not been accused of any wrongdoing.

But Mr. Skelos’ reign came to a swift and ignominious end when federal prosecutors charged that he had abused his power by pressuring business executives to provide his son about $300,000 for a patchwork of no-show or low-show jobs.

Mr. Skelos had made clear, the government said, that he would kill legislation the executives’ firms were seeking if they did not comply with his demands.
3. Use or attempt to use official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in direct contravention of the public interest at large (Class A Misdemeanor)

**OLEC 06-03, OLEC 07-02:** A legislator may not ask a lobbyist to solicit campaign funds for a political party or a legislative campaign.

**Attorney General: Rep. Youngblood abused position in DWI stop**

**NEW MEXICO**

State Rep. Monica Youngblood could face more legal troubles, as the Attorney General’s office has found she used her elected position to try to influence police officers during her DWI arrest.

Youngblood, a three-term legislator from Albuquerque was convicted of aggravated drunken driving. In a letter sent a day after her conviction, the AG’s Office told Youngblood they believe she violated the state’s Governmental Conduct Act. The AG’s Office said it submitted a formal ethics complaint with the Legislature’s administrative arm, which could trigger an internal review by a legislative ethics committee.

After being stopped at a sobriety checkpoint, Youngblood told Albuquerque Police Department officers she has introduced bills to protect them at the Capitol. “I literally fight for you guys,” Youngblood told one officer, according to lapel footage released after her arrest.

The AG’s Office described Youngblood’s statements as “excessive derogatory language” and said the comments captured on lapel cam video show a “clear intent” on Youngblood’s part to use her position to improperly influence officers.

It also said Youngblood violated two provisions in the Governmental Conduct Act. One of the provisions bars New Mexico elected officials from using their office to obtain personal benefits, while the other requires that legislators conduct themselves in a manner that justifies public confidence.

4. Use public funds, time, or personnel for his private gain or that of another, unless use authorized by law (Class A Misdemeanor)

*See OLEC 93-51, 93-61, 95-1:* A member of the General Assembly may contact a state agency regarding a private business interest. However, the legislator should make clear to the agency that such contact is made as part of private sector activities and not in an official capacity.

**Sen. Bert Johnson indicted for conspiring to steal public money**

**MICHIGAN**

State Senator Bert Johnson, accused of adding a ghost employee to his Senate payroll and stealing more than $23,000 from taxpayers, was arraigned in federal court and released on $10,000 unsecured bond.
The criminal case against Johnson, who is paid a $71,685 annual salary as a state senator, alleges he created a no-show job in his Senate office and used the cash to pay a debt.

According to the indictment, Johnson borrowed at least $14,000 in cash from an unnamed co-conspirator and later hired the person as a community liaison. The ghost employee was paid $23,134 in taxpayer money, according to the indictment.

**Amid investigation, Tennessee legislative leaders call for review of double dipping**

**TENNESSEE**

When the Tennessee Registry of Election Finance imposed more than $465,000 in fines on Rep. Jeremy Durham for violating campaign finance laws hundreds of times, there was a lengthy discussion about lawmakers potentially using campaign money for expenses already paid for with state dollars.

Among the 12 findings in the registry’s audit of Durham, officials noted he used $7,702 in donors’ money to cover expenses already paid for with legislative per diems - money lawmakers receive, in addition to their regular salary, to cover food, lodging and other incidental costs on days they serve in their official capacity.

In Tennessee there is no enforcement process for the legislature or the registry to ensure lawmakers aren’t double dipping. When they receive their per diems, lawmakers do not have to present any proof of the expenses.

An analysis by USA Today Network-Tennessee found, like Durham, 55 lawmakers spent thousands of dollars in campaign donations in 2016 on items they may have already used taxpayer money to cover.

5. **Use public funds, time, or personnel for partisan political campaign activity unless authorized by law or election to constitutional or party offices in the General Assembly (Class A Misdemeanor).**

   *See OLEC 93-58, 94-38, 95-15, 01-02:* A member of the General Assembly is prohibited from requesting a legislative staff person to perform any activity during the workday not associated with the performance of legislative duties. In addition, a member of the General Assembly is prohibited from using a legislative staff person in partisan political campaign activity during the workday.

6. **Use his official legislative stationery to solicit a vote or contribution for his or another person’s campaign for election or reelection to public office, or use the great seal of the Commonwealth on his campaign stationery or campaign literature. (Violation of this section is ethical misconduct.)**

**Guidelines for Kentucky legislative mailings**

The Legislative Ethics Commission has published guidelines to assist legislators when questions arise regarding the drafting of legislative mailings. The guidelines include the following:

*The Commission recognizes that there can be a fine line between what might appear to be partisan and political and what is nothing more than informing constituents on
legislative matters. Nevertheless, the Commission is charged with drawing that line, as is each legislator, and in order to help legislators in doing so, the Commission offers these guidelines.

In determining whether a mailing crosses the line between one which may be paid for with public funds and one which should be paid for with campaign funds, the Commission believes that under the statute the issue to be resolved is whether the mailing appears to be intended to influence the outcome of an election or to raise funds for an election campaign. If so, then it constitutes "partisan political campaign activity."

In resolving this issue, the Commission will look at the content of the mailing, the extent of its dissemination, and the timing of its dissemination. Some questions to be considered with respect to each of these factors are:

1) Content - Does the mailing contain only factual information, or does it contain language by the sender or another which is personally laudatory of the sender or laudatory or condemnatory of a political party or its members as such? Does the communication contain information about endorsements of the sender by various groups as opposed to merely reporting his or her legislative activity?

2) The Mailing - Is the mailing an individual letter to an individual constituent or other person who has contacted the legislator regarding the subject matter of the letter, or is it an unsolicited mailing to a large group of people whose names have been taken from voting lists or from membership lists of organizations which might be expected to support the sender with votes or campaign donations? Of course, a "newsletter" or report to a large number of constituents expressing a legislator's views on legislative issues, his or her legislative actions or those of the legislature in general would not, per se, be violative of the Code but would be scrutinized as to timing and content.

3) Timing - Did the mailing, particularly one sent to a large number of people, go out at a time close to an election at which the sender will be a candidate? If such a mailing is made within 60 days of an election, depending upon the particular circumstances of the case, and the content of the mailing, it would certainly be suspect as intended to influence the election even if the election itself were never mentioned.

7. While in the discharge of a legislator's duties, a legislator shall not become intoxicated by the use of liquor or any controlled substances.

New details on legislator's DUI arrest
GEORGIA

Georgia Rep. Kip Smith spent the hours before his recent DUI arrest with two other state lawmakers being entertained by three lobbyists, including one for Anheuser-Busch, according to state records. Lobbyist spending disclosures show Smith and fellow House members had dinner at Alfredo's Italian Restaurant in Atlanta. Smith was arrested hours later by police on charges of driving under the influence.
B. Other key provisions of the Code of Legislative Ethics

1. KRS 6.626 specifies that a legislator may solicit contributions on behalf of charitable, civic, or educational entities provided the solicitations are broad-based and not directed primarily at lobbyists.

See: OLEC 07-04: A legislator may not solicit a contribution for a political party from a lobbyist, because a party is not a “civic entity”.

Ex-Congressman Sentenced to 10 Years for Stealing Charitable Donations

FEDERAL

Former U.S. Representative Steve Stockman of Texas was sentenced to 10 years in prison and ordered to pay about $1 million in restitution after being convicted of stealing hundreds of thousands of dollars meant for charity and using it to pay for personal expenses and his political campaigns.

A federal jury found Stockman guilty on 23 counts - including money laundering, conspiracy and making false statements - after prosecutors alleged he had orchestrated a years’ long scheme to defraud charitable donors.

“The government proved that former Congressman Stockman ran his campaign and fraudulent charities to simply enrich himself and defrauded well-meaning donors,” Ryan Patrick, U.S. attorney for the Southern District of Texas, said. “This type of corruption by public officials gives our entire democratic system a black eye.”

At trial, prosecutors alleged that from May 2010 to February 2014, Stockman and his aides solicited about $1.25 million in charitable donations “based on false pretenses, then used a series of sham nonprofit organizations and dozens of bank accounts to launder the money,” a Justice Department statement said.

Judge Lee Rosenthal of U.S. District Court admonished Stockman, saying he had shown a willingness to exploit others and ruin their lives. And after handing down Stockman’s 120-month sentence, she said: “That’s a long time, but Mr. Stockman, I think you earned it.”

2. KRS 6.696 requires forfeiture of legislator’s retirement benefits if convicted.

State suspends DiMasi’s pension

MASSACHUSETTS

About a week after he declared himself a "broken man" and was sentenced to eight years in prison on corruption charges, Salvatore DiMasi was dealt another blow when the State Board of Retirement suspended the former Massachusetts House Speaker's $5,000-a-month state pension. State Treasurer Steven Grossman said the vote by the board was unanimous to stop the payments immediately.
"We have a job to do, and first and foremost that is to protect taxpayer's money," said Grossman. "It does not include paying pension benefits to people convicted of a crime in the performance of their office."

3. KRS 6.716 requires annual ethics training for legislators and training for all new legislators.

4. KRS 6.734 prohibits legislators from disclosing confidential information acquired in the course of their official duties.

After Collins indictment, House members seek to crack down on lawmakers' board service

FEDERAL

A bipartisan resolution introduced in the U.S. House would ban the chamber’s lawmakers from sitting on the boards of publicly traded companies, an ethics measure that responds to the criminal indictment of U.S. Rep. Chris Collins.

Collins, N.Y., was the chairman of Innate Immunotherapeutics, a pharmaceutical firm based in Australia that has pursued a novel treatment for multiple sclerosis. Federal prosecutors allege that Collins leaked confidential information about the failure of a crucial drug trial to his son, allowing family members to avoid $800,000 in losses by selling their stakes before the results were made public.

According to financial disclosure statements filed this year, at least 97 House members reported having some role in a for-profit firm whether as an investor, partner, officer or board member. But those firms appear to be all privately held and would not be covered by the proposed new restrictions.

Meanwhile, 139 sitting House members reported holding board positions in nonprofit organizations, ranging from family foundations to academic institutions to community service groups.

Nonprofit firms have posed ethical pitfalls for some lawmakers. Former Rep. Corrine Brown, Fla., for instance, was convicted in 2017 of using a nonprofit group as a personal slush fund. Brown, however, did not serve on its board or report any involvement with the group on her financial disclosure filings.

5. KRS 6.737 prohibits legislators and legislative candidates from holding certain contracts with state agencies.

See: OLEC 11-01: The Code of Legislative Ethics does not forbid a corporation owned by a legislator from contracting with a local entity, which is a corporate body and political subdivision, to furnish professional services to that entity under a contract let after public notice and competitive bidding.

Ex-Sen. Griego gets 18 months, $47,000 in fines

NEW MEXICO
Former Senator Phil Griego’s fall from Capitol deal-maker to felon will end with the former lawmaker behind bars.

A district judge sentenced Griego, who was convicted last fall of fraud, bribery and other public corruption charges, to 18 months in prison and more than $47,000 in fines.

“It’s a sad day, because you were given such a great responsibility and trust,” Judge Brad Loveless said. “When people don’t have trust in their government, they feel disenfranchised ... and you, quite frankly, are part of the problem.”

Prosecutors described Griego as a cunning con artist who had stealthily pushed for legislation authorizing the 2014 sale of a historic state-owned building near the Capitol, concealed his involvement in the deal, and ultimately pocketed a $50,000 commission as a real estate agent for the buyer.

6. KRS 6.744 restrictions on representing clients in court or before a state agency

KRS 6.744(1) - A legislator, by himself or through others, shall not use or attempt to use any means to influence a state agency in direct contravention of the public interest at large. Absent an express threat of legislative reprisal, nothing in this subsection shall prevent a legislator from contacting a state agency on behalf of a person or constituent, to make a legislative inquiry, or to obtain information relating to a person or constituent who has requested legislative assistance.

KRS 6.744(3)-(7) – Areas in which a lawyer/legislator may and may not practice -- Restrictions on representing clients:

KRS 6.744(3) - A legislator who is licensed in a profession, may, for compensation, represent a client before a state agency in ministerial functions; adversarial proceedings and negotiations related thereto; workers’ compensation proceedings; unemployment compensation proceedings; and other matters not prohibited by KRS 6.744(5)-(7).

KRS 6.744(5) prohibits a lawyer/legislator, or other licensed professional, from representing a client for compensation before a state agency in proceedings related to:

a. Contracting for the purchase, sale, rental, or lease of real property, goods or services from a state agency;
b. Any proceeding relating to rate making;
c. Adoption, amendment or repeal of any administrative regulation;
d. Obtaining grants of money or loans;
e. Licensing or permitting, but not including matters related to driver licensing; or
f. Any proceeding before the Public Service Commission.

KRS 6.744(6) prohibits a lawyer/legislator or other licensed professional from representing the Commonwealth or any state agency for compensation.

KRS 6.744(7) prohibits a lawyer/legislator from maintaining an action for money damages against the Commonwealth or a state agency in which either is the principal defendant except:
a. An appeal of an action by the state against the client;
b. Cases before the Workers Compensation Board; or
c. Unemployment compensation cases.

KRS 6.744(8) - A lawyer/legislator’s partners - A legislator’s properly licensed partner may practice cases which the legislator is precluded from handling by the Code of Legislative Ethics. However, the legislator must report on his or her annual financial disclosure form the names of the agencies before which the partners practiced and the names of the clients represented.

OLEC 93-41 - The Code prohibits a lawyer/legislator from representing, for compensation, the Commonwealth or any state agency. Therefore, a lawyer/legislator is prohibited from receiving compensation related to activities of his or her firm in areas the lawyer/legislator is not permitted to practice under the Code.

OLEC 93-62 - The Code of Legislative Ethics places no restrictions on the areas of law in which a properly licensed partner of a member of the General Assembly may practice.

OLEC 94-39 - A lawyer/legislator may represent a client for compensation in an agency enforcement matter including administrative hearings, settlement negotiations, or judicial appeals. The fact that the outcome of such proceedings may impact a subsequent permit eligibility would not constitute a violation of KRS 6.744(5)(e) of the Code. A lawyer/legislator is prohibited by the Code from representing a client for compensation in a state agency enforcement action that is based on questions relating to permitting, including a possible permit revision.

OLEC 98-4 - It is not permissible for a lawyer/legislator’s associate to represent a county water company before the Public Service Commission because the lawyer/legislator is a sole proprietor of the firm, and is prohibited by the Code of Ethics from representing a client in any proceeding before the PSC. It is not permissible for the associate to use the legislator’s name in correspondence or on stationery in a matter in which the lawyer/legislator is precluded from handling.

OLEC 02-03 - A lawyer/legislator may represent a client for compensation before the Revenue Cabinet in contesting the amount of income tax assessed against a client. No fee contingent upon the outcome of the matter may be charged by the legislator.

a. The Kentucky Rules of Professional Conduct for attorneys-- SCR 3.130[1.16], provides that a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation if it will result in violation of the Rules of Professional Conduct or other law.

b. Representation of lobbyists or their employers - A legislator may represent a lobbyist or the employer of a lobbyist in any matter not otherwise precluded by the Code of Legislative Ethics or the Rules of Professional Conduct.

KRS 6.787(2)(l) requires that the legislator list the names of any such clients on his or her annual financial disclosure form. See SCR 3.130[1.6](b)(4). A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to comply with other law. See also Comment [10] “Other law may
require that a lawyer disclose information about a client. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client. If, however, the other law supersedes this Rule and requires disclosure, (the Rules) permit the lawyer to make such disclosures as are necessary to comply with the law.”

**General considerations before accepting employment to represent a client in any transaction involving state government:**

**KRS 6.744(10)** requires the legislator to consider:

a. Whether the matter is being brought to him in an attempt to obtain improper influence over the state agency;

b. Whether there is a reasonable possibility that the state agency will be unduly influenced because of his participation; or

c. The effect of his participation on public confidence in the integrity of the Legislature.

**Rules of Professional Conduct -- SCR 3.130[8.4][d]:** It is professional misconduct for a lawyer to state or imply an ability to influence improperly a government agency or official.

**Other provisions relating to lawyer/legislators:**

**KRS 6.744(2)** provides that a legislator shall not, for compensation, appear before a state agency as an expert witness.

**KRS 6.744(9)** forbids a contingent fee contract for representation by a legislator before any state agency.

**Rules of Professional Conduct: SCR 3.130(1.11): Special conflicts of interest for former and current government officers and employees:**

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) Negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially . . .

**See SCR 3.130(1.11) Comment [4]:** This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer’s professional functions on behalf of the government.

**Whitaker v. Commonwealth**, 895 S.W.2d 953 (Ky. 1995)

It is clear from the language of this rule that it is the relationship between the lawyer and the client that must be the focus of the conflict examination.
OLEC 94-32 held that a lawyer/legislator may not represent a defendant in a lawsuit when it is likely that a cross-claim against the Commonwealth for indemnification will be required. OLEC 96-3: A legislator may properly advocate the purchase of his land for a county economic development project as long as he does not use his “official position” to advance the project and makes it clear to the government officials involved that his interests are private and not related to his service in the General Assembly.

7. KRS 6.747 prohibits legislators from accepting honoraria, requires LRC permission to accept prepaid or reimbursable out-of-state travel, and prohibits lobbyists and employers from furnishing out-of-state transportation or lodging for a legislator.

**Tennessee House lawmakers must disclose political junkets**

TENNESSEE

For the first time, House lawmakers in Tennessee will be required to disclose any out-of-state travel valued at more than $100 that is not paid for by the state under the chamber's new rules.

The move comes months after *The Tennessean* published investigations into legislative trips, which found several examples of trips paid for by political influencers and not disclosed by the politicians.

*The Tennessean* found examples of lawmakers traveling to Europe for a five-day "fact finding" trip paid for by a campaign contributor, a weekend trip to Alabama where five House members stayed at the condo of a school vouchers advocate, and a separate one-day trip House Speaker Beth Harwell, among others, went on to visit schools in North Carolina with another voucher advocate.

The trips were allowed because those paying for them were not registered lobbyists. Under the new rules, such trips would need to be disclosed. The rules require any House member to disclose the trip within 10 business days of the lawmaker’s return. The disclosure will then be made public.

“It’s for trips that are related to their legislative duties or that they’re invited to because of their status as a member,” said legislative attorney Doug Himes. “The whole idea is just to have people disclose so that the public can see if people take trips and where they are.”

Rep. Gerald McCormick of Chattanooga, said, “What it boils down to is if you’re embarrassed to tell people you took the trip, you probably shouldn’t take the trip,” he said.

**Louisiana legislators have accepted $73K-worth of free travel since 2016**

LOUISIANA

State legislators have spent considerable time in Baton Rouge with seven sessions over the past year and a half. But lawmakers have also benefited from thousands of dollars' worth of free trips across the country in that time.
A review by *The Advocate* of disclosure documents found state lawmakers have accepted complimentary hotel stays, travel, and conference admissions valued at more than $73,000 combined since the new Legislature took office in January 2016.

Some government watchdogs question whether special interests use the trips as a way to win face time and curry favor with lawmakers often at beach-side locales or in major cities; legislators generally defend them as taxpayer-money saving educational opportunities.

Burdett Loomis, a University of Kansas political science professor who studies special interests and state legislatures, said that lawmakers may benefit from the experts they meet when they attend conferences or learning about other states, but he said the optics aren't always great if someone else is footing the bill.

"If this is something that if the state Legislature deems worthwhile, then the Legislature itself could pay for the trips," Loomis said. "That (way) there is never a question of conflict of interest."

8. KRS 6.751(1) prohibits a legislator from accepting compensation, other than that provided by law, for performance of his legislative duties.

11 of 12 Felony Charges Upheld Against Former Alabama House Speaker

ALABAMA

In a unanimous opinion, the Alabama Court of Criminal Appeals affirmed former House Speaker Mike Hubbard's convictions on 11 of 12 felony ethics charges and reversed one conviction.

Hubbard was convicted on the 12 counts and sentenced to four years in prison. The court upheld Hubbard's convictions for receiving money from a principal, which is a business that employs a lobbyist; using his office for personal gain; lobbying state agencies for a business client; using state personnel to help a business client; and soliciting business investments from principals.

The conviction removed Hubbard from office. Before that, Hubbard had been one of the state's most powerful politicians.

When prosecutors outlined their case against Hubbard, they contended that the speaker illegally used his political office to supplement his income after he lost a private sector job that paid $132,000 a year. Several companies hired Hubbard as a consultant through his company, the Auburn Network.

Prosecutors contended that the payments violated the ethics law because two of the companies that hired Hubbard were principals, companies that employed lobbyists.

Hubbard solicited and received investments of $150,000 each from four business executives. The jury convicted Hubbard on the charges that the four investors were principals.

9. KRS 6.751(2) prohibits a legislator or a legislator's spouse from soliciting or accepting anything of value from a lobbyist or a lobbyist's employer.
**Missouri Voters Ban Most Lobbyist Gifts, Vote to End Gerrymandering**

**MISSOURI**

Clean Missouri celebrated a landslide victory in the November election. Their comprehensive good government proposal - Amendment 1 - was approved by 62% of state voters. Amendment 1 isn’t just about money in politics or special interest influence or gerrymandering, but the impact all of those things have on the political process. The amendment:

- Bans nearly all gifts from lobbyists (placing a limit of $5);
- Requires lawmakers to wait two years before becoming lobbyists;
- Establishes contribution limits for legislative candidates - $2,500 for state senate candidates and $2,000 for state house candidates;
- Puts in measures to prevent groups from working around contribution caps and bars fundraising on state capitol grounds; and
- Establishes a nonpartisan redistricting process with a nonpartisan expert to draw the legislative map and a citizens’ commission to review it. The amendment puts in specific guidelines to ensure the person hired by the state auditor meets the qualifications and criteria for the role.

**California lawmakers report accepting $518,000 in gifts, including travel and expensive meals**

**CALIFORNIA**

State lawmakers accepted $518,000 in gifts last year, including expensive meals, golf games, spa treatments, bottles of wine, tickets to pro sports events and trips to Europe, Asia and Central America, according to new financial disclosure reports.

The flood of 2,312 gifts to 114 lawmakers is troubling to former state Sen. Sam Blakeslee, who tried unsuccessfully to pass a bill that would have prohibited gifts from interests that employ lobbyists.

“I believe these gifts are corrosive to the public trust and create an appearance of an unhealthy intimacy between legislators and moneyed interests,” said Blakeslee, founder of the Institute for Advanced Technology and Public Policy at California Polytechnic State University, San Luis Obispo.

Gifts last year allowed legislators to go on study and trade trips to Germany, Australia, Morocco, Hawaii, China, El Salvador, Mexico, Italy, England, the Philippines and the Czech Republic. Nine lawmakers attended an annual conference in Maui sponsored by the Independent Voter Project, which receives funding from oil and tobacco firms and other interests lobbying the Legislature.

10. **KRS 6.754** states that a legislator shall not advocate or cause the employment, promotion, transfer, or advancement of a member of the legislator’s family to an office or position in the executive branch of state government.

**Hamilton County courthouse clings to the ancient practice of hiring on the basis of connections**
OHIO

Historically, that inside track is well-worn in local government across the country. Taxpayer-funded jobs often go to people as much for their personal and political linkages as their work credentials - if not more so. Even critics concede that the winners of elections reap the spoils. Jobs are some of those spoils.

When a public official in Ohio violates the state nepotism law, enforcement falls to the Ohio Ethics Commission, in Columbus.

“Giving precedence or advantages to a family member in public hiring decisions is unfair to other applicants who may be equally or even more qualified,” says OEC Executive Director Paul Nick. “Public agencies should spend public dollars to hire the most qualified candidates and not those with the best family connections.”

Mary Weissman, a partner at The Weissman Group human resources consulting firm in Dayton, says that, ultimately, nepotism can lead to “serious problems.”

“If you're going to hire a person just because they are a relative of somebody, chances are you're also going to rate them just because they are the relative of somebody, you're going to promote them just because they are the relative of somebody and you're going to give them wage increases based upon them being the relative of someone,” she says. “The first decision taints everything that comes after.”

11. KRS 6.757 prohibits a former legislator from registering as a lobbyist until after two years have elapsed since the date the legislator left office.

Constitutional amendment on “revolving door” lobbyists approved

FLORIDA

In the November election, Florida voters overwhelmingly approved a measure that bans public officials from paid lobbying jobs for six years after they've completed service.

With over 78 percent support, voters approved Amendment 12, which bars elected officials, agency heads, judges and other government employees from lobbying for compensation for six years after leaving office instead of the current two. They will still be allowed to lobby in connection with their official duties. For example, a county commissioner could contact a legislator about transportation financing.

Proponents say it is needed to stop the "revolving door" of elected officials who leave office and then go to work for the lobbying firms that once worked to persuade them. Opponents say the six-year limit is too long and might dissuade good candidates from seeking office.

Former lawmaker lands job with vaping group that benefited from his vote

INDIANA

During his final weeks as an Indiana lawmaker, Sen. Brent Steele voted in favor of a controversial vaping bill that allowed only a handful of companies to make e-liquid sold in Indiana. Now, the recently retired lawmaker has taken a new job representing those companies.
Steele has been hired as executive director of the Vapor Association of Indiana, which represents the few companies licensed to manufacture electronic smoking device liquid under Indiana’s stringent new law. Steele, who did not seek re-election in November, said he sees no ethical issues with his new position, and he will hire an outside lobbyist to represent the Association in the upcoming session.

A rule that prohibits lawmakers from lobbying their colleagues for one year after leaving office is intended to prevent lawmakers from trading on their public service for private financial gain.

David Orentlicher, an Indiana University law professor and former lawmaker, said such employment arrangements raise questions about whether the state’s legislative ethics laws go far enough.

“You worry it creates the appearance of being rewarded for your vote,” he said. “Then you’re worried about them taking advantage of their relationships once they leave. Both of those are at stake here.”

12. KRS 6.761 sets forth conflict of interest provisions, and prohibits voting or other legislative action on matters in which a legislator, family member or business associate will derive a direct monetary gain or suffer a direct monetary loss.

OLEC 07-03: The Code of Legislative Ethics does not forbid a legislator who is an unpaid director of a non-profit entity furnishing medical care from voting on a state budget which contains a line item appropriation for the non-profit entity.

OLEC 08-01: If the legislation has a similar effect on all facilities forming the class which might become eligible to offer casino gaming, a legislator who is an employee of such a facility may sponsor or support legislation relating to gaming or a proposed constitutional amendment to allow gaming. However, if the legislation applies only to the facility that is the legislator’s employer, then the legislator should abstain from voting and disclose his interest in the legislation in accordance with KRS 6.761(2).

Documents: Florida legislator helped friend with secret $1 million state payment

FLORIDA

A state senator helped a friend’s business obtain $1 million hidden in the state budget after the two discussed how the lawmaker would promote the business, budget documents and emails show.

Sen. Aaron Bean helped secure a $1 million special appropriation in this year’s budget for an early mental health screening program run by Catherine Drew, the wife of Nassau County Tax Collector John Drew. Bean and John Drew have been friends for more than a decade and have supported each other politically.

The Drews operate Florida Psychological Associates in Fernandina Beach in northeastern Florida. They used the state money to start a pilot program that conducts early mental health assessments for schoolchildren and criminal defendants.
A lawmaker said Bean asked him to make a separate $1 million request for the program that was hidden in the Florida State University College of Medicine budget.

The $1 million secret appropriation, which is not subject to the governor's line-item veto, is among $315 million in special requests granted through universities to lawmakers over the past seven years, with no specific mention of them anywhere in the budget.

**Ethics panel hammers state Rep. Keith Hall**  
**KENTUCKY**

State Rep. W. Keith Hall was fined and reprimanded by a legislative ethics panel after he admitted the panel had evidence sufficient to convict him of violating state ethics laws.

In the resolution to the ethics probe which began following a state auditor's probe of Mountain Water District, Hall was found to have violated Kentucky law which prohibits a legislator from using or attempting to use his influence as a lawmaker in "any matter which involves a substantial conflict between his personal interest and his duties in the public interest."

Hall agreed to the maximum penalty for his actions, including a $2,000 fine and a public reprimand from the ethics commission.

The ethics probe centered on work a company owned by Hall did on a sewer line extension project in 2005. Hall voted to approve the state budget which contained coal severance tax funding earmarked for water and sewer projects. A portion of that money found its way to Hall's company via its work installing electrical boxes as part of the sewer extension.

The ethics violation states that Hall approved money which his company eventually received. However, Hall's attorney Brent Caldwell said the work was all but complete and Hall had been paid via a bank loan. The state money was used to pay back the bank, effectively paying for the project and the work BMM completed.

"I would expect, and my advice would be, from a personal standpoint, that no legislator should do work in his district in which payment might come from the state," Caldwell said.

Hall was also convicted in 2015 of bribing a state mine inspector who inspected his Pike County coal mines. He was sentenced to serve seven years in federal prison.

13. **KRS 6.764** prohibits a legislator from accepting any appointment as an officer or employee of the Commonwealth or any state agency, and prohibits a legislator from serving on any special district board if the board has the authority to levy taxes or set rates.

14. **KRS 6.767** prohibits legislators and candidates from accepting campaign contributions from lobbyists at any time; and during a regular session, a legislator or candidate shall not accept a campaign contribution from an employer of a lobbyist or a PAC. As of July 2022, the regular session ban on a legislator accepting PAC or employer contributions does not apply to a sitting legislator who is a candidate for a statewide office.
OLEC 05-01: A legislator may not solicit a campaign contribution from a legislative agent (lobbyist) for any of the four caucus campaign committees. OLEC 06-02: A legislator may solicit campaign contributions for a caucus campaign committee so long as the legislator complies with the standards governing solicitation for his or her own campaign committee (e.g. may not solicit a lobbyist). OLEC 07-04: A legislator may not solicit a contribution from a lobbyist for a political party.

As clock ticked toward session, Alaska lawmakers turned to lobbyists for cash

ALASKA

Alaska law bars state lawmakers from political fundraising during the annual legislative session. But the law doesn’t stop them from collecting checks the night before. And less than 24 hours before the state House and Senate would gavel in, legislators held their annual pre-session events.

The session-eve fundraisers are a long tradition in Juneau. And lawmakers say the lobbyists’ donations have no effect on the official actions they take starting the very next day.

"If you walk from a fundraiser and then the next morning start making laws, it shows you that’s where the priority is: serving the priorities of the people who were at the fundraiser, and not serving the priorities of the citizens," said Casey Reynolds, a former political operative who’s mounted a campaign against the events.

Lawmakers said they see no distinction between the fundraisers and events held any other time outside of session - though all agreed that the in-session ban on fundraising helps stop special interests from linking contributions to legislators' support for individual bills.

The amount of time between the start of official business and a political fundraiser would likely be a "significant factor" in determining how much donations influence elected officials, said Richard Painter, a campaign finance expert and professor at the University of Minnesota Law School who testified in defense of Alaska's donation limits at a recent federal trial.

At political events, "you have relationships formed and friendships, people feeling indebted to each other. That will wane with time. But you need to give it time," Painter said. "The relationships that can have the most impact are the ones that are the most recent."

Pay to play? Missouri Senate leader faces questions about consumer protection bill

MISSOURI

Six days after Senate President Pro Tem Ron Richard filed legislation seeking to make big changes to Missouri's consumer protection law, he got a $100,000 check from Joplin businessman David Humphreys.

The timing of that donation, and the fact that the legislation in question could undercut a class-action lawsuit against Humphreys’ company, has stirred allegations of pay-to-play against Richard and calls for an investigation.
Sen. Ryan Silvey, Kansas City, who has had run-ins with both Humphreys and Richard in the last year, said the situation warrants the attention of law enforcement.

“The facts are (Richard) received large contributions. He filed legislation that would dismiss a lawsuit against the people who made those contributions,” Silvey said. “It’s not for me to determine motive. It’s not for me to determine if there was a quid pro quo.”

15. **KRS 6.781 to KRS 6.797** require all members of the General Assembly to file a financial disclosure statement by February 15 of each year, covering the previous calendar year. Candidates and nominees for the General Assembly, and major management personnel of the legislative branch, must also file the statement.

**OLEC 12-01:** KRS 6.787(2)(f) requires that each source of gross income in excess of $200 received during the preceding year be reported by legislators on their annual financial disclosure form. This includes the source of any receipts from gambling in excess of $200.

**Judge recommends $58,000 in ethics fines for Florida legislator**

**FLORIDA**

Former U.S. Rep. David Rivera should be forced to pay a $16,500 fine plus $41,321.96 in restitution for breaking Florida ethics rules when he was a state legislator, an administrative law judge in Tallahassee recommended.

The judge found that Rivera failed to properly disclose his income and double-billed taxpayers by accepting state reimbursement for travel previously paid for by his campaign account, submitted improper financial disclosures, and failed to turn in his final disclosure within a 60-day period after leaving the statehouse.

See above: **SCR 3.130[1.6](b)(4)** A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to comply with other law or court order.

16. **KRS 6.811** prohibits lobbyists from making campaign contributions to legislators, candidates, or campaign committees; and prohibits lobbyists from serving as a legislator’s or candidate’s campaign treasurer, or soliciting, controlling, or delivering a campaign contribution.

**III. ETHICAL VIOLATIONS – A DOUBLE EDGED SWORD THAT CAN CUT A LAWYER/LEGISLATOR TWICE**

A. Violation of several provisions of the Code of Legislative Ethics constitutes either a Class D felony, [see e.g. KRS 6.731(2), 6.737, 6.741 and 6.761] or a Class A misdemeanor [see e.g. KRS 6.731(1)(3)(4) and (5) and KRS 6.797(2)(b)]. Also, KRS 522.030 (1)(c) makes it a Class B misdemeanor for a public servant to violate any statute relating to his office.
“Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional role of attorney.” **K.B.A. v. Profumo**, 931 S.W.2d 149 (Ky. 1996). See also ABA Model Rules of Professional Conduct 8.4, Comment [5].

B. The Rules of the Kentucky Supreme Court

**SCR 3.320** provides that when any member of the Kentucky Bar Association has been convicted of a felony or a Class A misdemeanor, a copy of the judgment shall be filed with Bar Counsel for action under **SCR 3.160** governing the initiation of disciplinary cases.

**SCR 3.166** provides that any attorney who pleads guilty or is convicted of a felony shall be automatically suspended from the practice of law. See **K.B.A. v. Haggard**, 57 S.W.3d 300 (Ky. 2001)

**SCR 3.130[8.4](b)** provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. See **K.B.A. v Colston**, 54 S.W. 3d 158 (Ky. 2001); **K.B.A. v. McKinney**, 900 SW 2d 605 (Ky. 1995)

Acquittal or dismissal of a criminal charge won't necessarily preclude professional discipline. See **K.B.A. v. Vincent**, 282 SW 2d 335 (Ky. 1955)

**Feds: Sen. Hutchinson stole campaign funds; spent money on cruises, jewelry and Netflix fees**

**ARKANSAS**

A 15-page unsealed federal indictment against Sen. Jeremy Hutchinson, Little Rock, alleges that the Arkansas lawmaker devised a scheme to steal thousands of dollars from campaign funds to spend on everything from cruises and travel expenses to utility bills and Netflix fees.

The office of U.S. Attorney for the Eastern District of Arkansas announced a federal grand jury issued a 12-count indictment that charges Hutchinson with eight counts of wire fraud and four counts of filing false tax returns.

According to the indictment describing Hutchinson’s alleged scheme, the senator solicited and accepted at least $350,000 in campaign contributions and donations between 2010 and 2017 that he put into campaign and personal banking accounts. During this same period, Hutchinson “stole, misappropriate and converted” thousands of dollars from those funds, the filings said.

Among key details, federal investigators said Hutchinson on at least three occasions converted nearly $125,000 in campaign funds on items and things for his own personal use, including a Caribbean cruise, trips to New Orleans, hotel and other travel expenses, gym membership fees and school tuition payments. Hutchinson also used those funds to buy jewelry, clothes and make other retail purchases, and Netflix fees and utility bills at his personal residence, according to the indictment.
In addition to violations of Arkansas campaign finance laws, officials said Hutchinson also falsified his federal income tax returns from 2011 to 2014 by failing to report his total income, which included the campaign funds he converted to his personal use during that same period.

C. **N.C. senator's private legal work mixes with state policy**

**NORTH CAROLINA**

Fletcher Hartsell has represented Cabarrus County north of Charlotte in the state Senate for more than 24 years. He's also a lawyer who represents clients with business before – or needing action from – state government.

It's a difficult balancing act for legislators who are also lawyers. In general, the main things that lawyers in public service need to watch out for is being in a position to financially benefit their firms, said Perry Newson, executive director of the N.C. State Ethics Commission. The determinations are specific to each situation and may come down to the person's position in a firm, whether they are equity partners, for example, or if they have a relationship with a firm but are not partners or associates.

**Former top Massachusetts lawmaker often helped his business, family**

**MASSACHUSETTS**

The calls kept coming, one after another. It was State Rep. Garrett Bradley on the line, wanting to get a message to the governor, pushing a plan for the state to bail out some financially struggling county governments.

But Bradley left out one key fact in his calls to then-governor Deval Patrick: Bradley's law firm represented the retirement systems in Plymouth, Norfolk, and Bristol counties, and stood to make millions of dollars in legal fees from lawsuits filed on their behalf. If the counties disappeared, so would the county treasurers, jeopardizing Bradley's legal work.

Bradley's keen interest in the successful county bailout, described by a key Patrick aide who talked on the condition of anonymity, is part of a pattern in his 16-year legislative career of taking actions in his official capacity that advanced his business interests, state records show.

Two years after the bailout, Bradley's firm reported earning $583,596 in lawsuits involving retirement systems of the three counties that were in danger of shutting down, according to state records.

“Holding public office is a public trust,” said Paula A. Franzese, a Seton Hall University law professor and former head of the State Ethics Commission in New Jersey. “Those who serve are put into office to preserve and protect the best interests of the people. They are not there for personal enrichment at the public’s expense.”

IV. **OTHER AREAS IN WHICH ETHICS CONCERNS ARISE FOR LEGISLATORS**

**Kentucky lawmaker convicted of bribery**

**KENTUCKY**
A U.S. District Court jury in Pikeville found former Rep. Keith Hall guilty of paying over $46,000 in bribes to a state coal mine inspector to ignore violations at Hall’s surface mines.

According to Hall’s indictment, bribes were paid by two of Hall’s coal companies to a shell company created by Hall and the mine inspector. During that time period, the U.S. Attorney said the inspector ignored violations that occurred on Hall’s property, and the two men disguised the payments as consulting fees.

“Mr. Hall’s brazen scheme to corrupt an important governmental function for his personal benefit is made all the more egregious by his former status as a member of the Kentucky General Assembly,” said Kerry B. Harvey, United States Attorney for the Eastern District of Kentucky. “The United States will seek a sentence which properly reflects the serious nature of Mr. Hall’s criminal conduct.”

In March 2016, Hall was sentenced to serve 7 years in federal prison.

**Kentucky lawmaker pleads guilty to campaign finance abuse**

**KENTUCKY**

Former Rep. Ben Waide of Madisonville pled guilty in Franklin Circuit Court to attempting to accept illegal campaign contributions and misspending campaign money. Waide’s crimes relate to his 2010 campaign for state representative, and he was charged after a complaint filed with the Registry of Election Finance by shareholders of a company partly owned by Waide.

Waide received a suspended 12-month jail sentence, which he will have to serve only if he violates his two-year probation.

Waide illegally accepted campaign contributions from the company, used campaign funds for illegal expenditures, and sought personal reimbursements for campaign advertising expenses that were either nonexistent or paid for by the company.

According to a lawsuit filed by his ex-partners, Waide allegedly diverted over $30,000 in corporate money from a Madisonville physical therapy firm he co-owned with two other men. The ex-partners said Waide used the money without their permission to pay for campaign expenses and his legislative trips to the state Capitol in Frankfort, although taxpayers reimbursed him nearly $17,000 every year for his legislative mileage, meals and hotel rooms, according to public records.
KENTUCKY LEGISLATIVE ETHICS COMMISSION MEMBERS

David Nicholas-Chair of the Commission

Mr. Nicholas was appointed to the Commission by the Senate President in October, 2018. He has worked for 15 years for the General Assembly as Staff Administrator of the Administrative Regulation Review Subcommittee. Prior to that, he was Director of the Division of Occupations and Professions in the Finance Cabinet for 18 years. Mr. Nicholas has a Master's in Public Administration and a Bachelor's in Business Administration from Eastern Kentucky University. He is a member of Buck Run Baptist Church and member of the Board of Directors of the Kentucky Golf Association. He and his wife Pat live in Frankfort and have four children and five grandchildren.

Tanya Pullin-Vice Chair of the Commission

Judge Tanya Pullin was appointed to the Commission by the Senate President in May 2020. She graduated from Greenup County High School and received a B.S. from the University of Kentucky. She received an M.A. from Duke University and a J.D. from the University of Kentucky College of Law. Judge Pullin served in the Kentucky House of Representatives from 2001 to 2016. From 2016 to 2019, she served as an Administrative Law Judge in the Department of Workers’ Claims. Judge Pullin currently resides in South Shore in Greenup County.

Sheldon Baugh

Former State Representative Sheldon E. Baugh of Russellville was appointed to the Commission by the Senate President in July 2017. Mr. Baugh has an insurance agency in Russellville, and he served in the House of Representatives from January 1995 to January 2008. He attended Western Kentucky University, and served in the U.S. Air Force from 1962 to 1966. Mr. Baugh was a Magistrate on the Logan County Fiscal Court from 1977 to 1981, and he served as Midwest Director and two-term President of the Federation of Historical Bottle Collectors. He is a member and former President of the Russellville Rotary Club, and he and his wife Brenda have two children.

Ernest L. Harris, Jr.

Former Senator Harris was appointed to the Commission by the President of the Senate in May, 2021. Mr. Harris is a native of Oldham County and graduated from the University of Kentucky with a bachelor's degree in business administration. He also has a master's in management from Webster University. Mr. Harris served his country for 20 years in the U.S. Air Force and retired as a Lt. Colonel. After his Air Force career, he flew for UPS as a Boeing 757/767 captain. He served in the Kentucky Senate from 1995 until his retirement in 2020. He lives on the family farm in Oldham County.

Katherine Gail Russell
Ms. Russell was appointed to the Commission by the Speaker of the House in May, 2021. She has a private law practice with the law firm of Tilford Dobbins & Schmidt PLLC in the area of bankruptcy, banking and collections, and serves on the Uniform Law Commission and on the Visiting Committee of the University of Kentucky J. David Rosenberg College of Law. A former Secretary of the Public Protection Cabinet, she also served as Counsel to the House Speaker, as a member of the Kentucky Racing Commission, the Kentucky Economic Development Partnership Board, the Kentucky 911 Services Board, and as the Small Business Ombudsman for the Public Protection Cabinet. She also has served as a Special Justice on the Kentucky Supreme Court. A native of Murray, Kentucky, she received her B.A. with highest distinction from the University of Mississippi and received her J.D. from the University of Kentucky.

Arnold Simpson

Former State Representative Arnold R. Simpson was appointed to the Commission by the LRC in September 2021. He was born in Somerset, Kentucky, and was raised in Covington. He received his BA in Political Science in 1974 from Kentucky State University, and his Juris Doctor in 1977 from the University of Kentucky College of Law. He practiced law from 1978 until his retirement in 2018. He served in the Kentucky House of Representatives from 1994 to 2018. He also served as the Covington City Manager from 1986 to 1989, and the Assistant City Manager from 1984 to 1986. He has served on numerous community boards and organizations. He and his wife Jo Ann reside in Covington.

Anthony Wilhoit

Judge Wilhoit was appointed to the Commission by the Speaker of the House in 2016. He was the Executive Director of the Legislative Ethics Commission from November, 1997 until he retired in July, 2015. In 1976, he joined the Kentucky Court of Appeals, and he retired as Chief Judge in 1997. Judge Wilhoit also served as a police judge, Versailles City Attorney, Woodford County Attorney, state public defender, and deputy secretary of the Justice Cabinet. He earned an A.B. from Thomas More College, a law degree from the University of Kentucky, and an LLM from the University of Virginia. In 2012, Judge Wilhoit received the COGEL Award, the highest international award given to a person working in the fields of ethics, campaign finance, and election law. He lives in Versailles.

KENTUCKY LEGISLATIVE ETHICS COMMISSION STAFF

Laura H. Hendrix – Executive Director: Prior to being appointed Executive Director in September, 2019, she was Counsel to the Commission, joining the staff in May 2018. Previously, she was the General Counsel for the Speaker of the Kentucky House of Representatives, General Counsel for the Legislative Research Commission, Committee Staff Administrator for the Elections, Constitutional Amendments and Intergovernmental Affairs Committee, and a Legislative Analyst for the Health and Welfare Committee. Prior to her 20 years of legislative service, she was the General Counsel for the Executive Branch Ethics Commission, Assistant General Counsel for the Kentucky Higher Education Assistance Authority, and clerked for Judge William L. Graham of the Franklin Circuit Court. She received a BA in history from Washington University in St. Louis and a JD from the University of Kentucky College of Law. She is admitted to practice before the United States Supreme Court, and the Western and Eastern Districts of Kentucky. She is a 2018 Henry Toll Fellow.
Emily Dennis – Counsel. Ms. Dennis joined the Commission Staff in October 2019. Previously, she served as General Counsel of the Kentucky Registry of Election Finance. She was employed by the Kentucky Justice & Public Safety Cabinet in its Office of Legal Services and also served as a Staff Attorney with the Cabinet for Economic Development. Prior to joining state government, she was associated with the Danville law firm of Sheehan, Barnett, Hays, Dean & Pennington, P.S.C. She received her JD in 1998 from the University of Louisville. She earned a BA from Transylvania University, where she was a William T. Young scholar and graduated magna cum laude in 1992. When not practicing law, Emily manages Big Red Stables on her family’s third generation farm in Mercer County.

Donnita Crittenden – Executive Assistant. Mrs. Crittenden joined the Commission in August 1993. She is a graduate of Franklin County High School, and has a BA in Public Administration from Kentucky State University. She joined the Commission in August 1993. Her previous experience includes a three-year internship with the Kentucky Department of Education, specifically assigned to the State Board of Education.

Lori M. Smither – Staff Assistant. Mrs. Smither is a graduate of Franklin County High School and has a degree in four areas of Interdisciplinary Early Childhood Education. In addition, Lori has obtained certificates for the Kentucky Director’s Credential, Kentucky Child Care Provider, School Age Child Care, Interdisciplinary Early Childhood Education Technical Studies, and Early Childhood Administrator. Her previous experience includes working as a Member Service Representative at a banking institution for seven years, as a Director/Teacher for 11 years, and part-time in the Commission Office for eight years.

Mark Brengelman – Enforcement Counsel (part-time). Mr. Brengelman graduated with both a BA and MA in Philosophy from Emory University in Atlanta, and earned a JD from the University of Kentucky College of Law. As Assistant Attorney General, he worked in the area of administrative and professional law as the assigned counsel and prosecuting attorney to numerous health profession licensure boards. He retired from state government in 2012, became certified as a hearing officer, and opened his own law practice. Mr. Brengelman is a frequent participant in continuing education having presented for multiple state and national organizations and private companies. He also represents children as Guardian ad Litem and parents as Court Appointed Counsel in confidential child abuse and neglect proceedings in family court.

Joel Cotton – Investigator (part-time). Mr. Cotton joined the Commission staff in 2022. He holds a BA in Police Administration from Eastern Kentucky University, and is a Licensed Private Investigator. He served as a Federal Probation Officer for over 20 years. He also served as a Kentucky State Trooper for eight years, including serving on the Governor’s Executive Security team. He also served as a Pretrial Release Officer for the Kentucky Administrative Office of the Courts. He was awarded the Kentucky State Police Life Saving Commendation and the DUI Commendation.