

CITY OF KINGSLEY, KENTUCKY
Ordinance No. 6, Series 1994

**AN ORDINANCE ESTABLISHING A CODE OF ETHICAL CONDUCT
APPLICABLE TO THE OFFICERS AND EMPLOYEES OF THE CITY OF
KINGSLEY, KENTUCKY.**

WHEREAS, the General Assembly of the Commonwealth of Kentucky has enacted legislation requiring this city to enact and enforce a code of ethics governing the conduct of city officers and employees; and

WHEREAS, public office and employment are a public trust and government has a duty to provide its citizens with standards by which they may determine whether public duties are being faithfully performed, and to apprise their officers and employees of the behavior which is expected of them while conducting their public duties; and

WHEREAS, the officials of this city are committed to the operation of a city government that manifests the highest moral and ethical standards among its officers and employees; and

WHEREAS, it is the purpose of this Ordinance to provide a method of assuring that standards of ethical conduct for officials and employees shall be clear, consistent and uniform in their application, and to provide local officials and employees with advice and information concerning possible conflicts of interest which might arise in the conduct of their public duties,

NOW, THEREFORE, Be it ordained by the City of Kingsley, Kentucky:

SECTION 1: Title. This ordinance shall be known and may be cited as the "City of Kingsley, Kentucky Code of Ethics".

SECTION 2: Definitions. As used in this ordinance, unless the context clearly requires a different meaning:

(A) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, professional service corporation, limited liability company, or any legal entity through which business is conducted for profit.

(B) "Board of Ethics" means the City of Kingsley Board of Ethics which is created and vested by this ordinance with the responsibility of enforcing the requirements of the city's code of ethics.

(C) "Candidate" means any individual who seeks nomination or election to a city office. An individual is a candidate when the individual files a notification and declaration for nomination for office with the county clerk or secretary of state, or is nominated for office by

a political party, or files a declaration of intent to be a write-in candidate with the county clerk or secretary of state.

(D) "City" refers to the City of Kingsley, Kentucky.

(E) "City agency" means any board, commission, authority, nonstock corporation, or other entity created, either individually or jointly, by this city.

(F) "Employee" means any person, whether full-time or part-time, and whether paid or unpaid, who is employed by or provides service to the city, except those persons who perform professional services as a physician, attorney, accountant, engineer or architect. The term "employee" shall not include any contractor or subcontractor or any of their employees.

(G) "Family member" means spouse, parent, child, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent or grandchild.

(H) "Immediate family member" means a spouse, an unemancipated child residing in the officer's or employee's household, or a person claimed by the officer or employee, or the officer's or employee's spouse, as a dependent for tax purposes.

(I) "Officer" means any person, whether full-time or part-time, and whether paid or unpaid, who is one of the following: Mayor, Commissioner, City Clerk, City Treasurer, any person who occupies a nonelected office created under KRS 83A.080, a member of the governing body of any city agency who has been appointed to the governing body of the agency by the city, except those persons who perform professional services as a physician, attorney, accountant, engineer or architect.

STANDARDS OF CONDUCT

SECTION 3: Conflicts of Interest in General. Every officer and employee of the city and every city agency shall comply with the following standards of conduct:

(A) No officer or employee, or any immediate family member of any officer or employee, shall have an interest in a business or engage in any business, transaction, or activity, which is in substantial conflict with the proper discharge of the officer's or employee's public duties.

(B) No officer or employee shall intentionally use or attempt to use his or her official position with the city to secure unwarranted privileges or advantages for himself or herself or others.

(C) No officer or employee shall act in his/her official capacity in any matter where he/she, a member of his/her immediate family, or a business organization in which he/she has an interest, has direct or indirect financial or personal involvement that might reasonably be expected to impair his/her objectivity or independence of judgment.

(D) No officer or employee shall undertake any employment or service, for compensation or not, which might reasonably be expected to prejudice his/her independence of judgment in the exercise of his/her official duties.

(E) No officer or employee shall be deemed in violation of any provision in this section if, by reason of the officer's or employee's participation, vote, decision, action or inaction, no financial benefit accrues to the officer or employee, a family member, an outside employer, or a business as defined herein as a member of any business, occupation, profession, or other group, to any greater extent than any gain could reasonably be expected to accrue to any other member of the business, occupation, profession, or other group.

SECTION 4: Conflicts of Interest in Contracts.

(A) No officer or employee of the city or any city agency shall directly or through others undertake, execute, hold or enjoy, in whole or in part, any contract made, entered into, awarded, or granted by the city or a city agency, except as follows:

(1) The prohibition in subsection (A) of this section shall not apply to contracts entered into before an elected officer filed as a candidate for city office, before an appointed officer was appointed to a city or city agency office, or before an employee was hired by the city or a city agency. However, if any contract entered into by a city or city agency officer or employee before he or she became a candidate, was appointed to office, or was hired as an employee before he or she became a candidate, was appointed to office, or was hired as an employee, is renewable after he or she becomes a candidate, assumes the appointed office, or is hired as an employee, then the prohibition in subsection (A) of this section shall apply to the renewal of the contract.

(2) The prohibition in subsection (A) of this section shall not apply if the contract is awarded after public notice and competitive bidding, unless the officer or employee is authorized to participate in establishing the contract specifications, awarding the contract, or managing contract performance after the contract is awarded. If the officer or employee has any of the authorities set forth in the preceding sentence, then the officer or employee shall have no interest in the contract, unless the requirements set forth in subpart (3) below are satisfied.

(3) The prohibition in subsection (A) of this section shall not apply in any case where the following requirements are satisfied:

(a) The specific nature of the contract transaction and the nature of the officer's or employee's interest in the contract are publicly disclosed at a meeting of the governing body of the city or city agency.

(b) The disclosure is made a part of the official record of the governing body of the city or city agency before the contract is executed.

(c) A finding is made by the governing body of the city or city agency that the contract with the officer or employee is in the best interests of the public and the city or city agency because of price, limited supply, or other specific reasons.

(d) The finding is made a part of the official record of the governing body of the city or city agency before the contract is executed.

(B) Any violation of this section shall constitute a Class A misdemeanor, and upon conviction, the court may void any contract entered into in violation of this section. Additionally, a violation of this section shall be grounds for removal from office or employment with the city in accordance with any applicable provisions of state law and ordinances, rules or regulations of the city.

SECTION 5: Receipt of Gifts. No officer or employee of the city or any city agency shall directly, or indirectly through any other person or business, solicit or accept any gift, favor, loan or promise under circumstances in which it could reasonably be inferred that the gift was intended to influence, or could reasonably be expected to influence the officer or employee in the performance of his/her or public duties. This provision shall not apply to the solicitation or acceptance of campaign contributions for an elective public office as governed by the Kentucky Revised Statutes.

FINANCIAL DISCLOSURE

SECTION 6: Who Must File. The following individuals shall be required to file a financial interests statement with the Board of Ethics: elected officers; candidates for elected office; nonelected officers and employees of the city with procurement authority exceeding one thousand dollars (\$1000.00) per purchase; members of the Board of Ethics.

SECTION 7: Contents of the Financial Interests Statement and Filing Requirements.

(A) The statement of financial interests shall be on a form prescribed by the Board of Ethics and include the following information for the preceding calendar year, the first statement to be due on April 15, 1996:

(1) The name, current business address, business telephone number, and home address of the filer.

(2) The title of the filer's office, office sought, or position of employment.

(3) The occupation of the filer and the filer's spouse.

(4) Information that identifies each source of net income of the filer and filer's immediate family members exceeding ten thousand (\$10,000.00) during the preceding calendar year, and the nature of the income (e.g. salary, commission, dividends, retirement fund distribution, etc.)

(5) The name and address of any business located within the state in which the filer or any member of the filer's immediate family had at any time during the preceding calendar year an interest of ten thousand dollars (\$10,000.00) at fair market value of five percent (5%) ownership interest or more.

(6) The name and address of any business located outside of the state, if the business has engaged in any business transactions with the city during the past three (3) years, or which is anticipated to engage in any business transactions with the city, in which the filer or any member of the filer's immediate family had at any time during the preceding calendar year an interest of ten thousand dollars (\$10,000.00) at fair market value or five percent (5%) ownership interest or more.

(7) A designation as commercial, residential, or rural, and the location of all real property within the county, other than the filer's primary residence, in which the filer or any member of the filer's immediate family had during the preceding calendar year an interest of ten thousand dollars (\$10,000.00) or more.

(8) Each source by name and address of gifts or honoraria, excluding inheritances, having an aggregate fair market value of one hundred dollars (\$100.00) or more from any single source (excluding gifts received from family members), received by the filer or any member of the filer's immediate family during the preceding calendar year.

(9) The name and address of any creditor owed more than ten thousand dollars (\$10,000.00) except debts arising from the purchase and/or refinance of a primary residence or the purchase of consumer goods which are bought or used primarily for person, family, or household purposes.

(B) Nothing in this section shall be construed to require any officer or employee to disclose any specific dollar amounts nor the names of individual clients or customers of businesses listed as sources of income.

(C) The financial disclosure statement shall be filed annually by officers and employees no later than April 15, beginning April 15, 1996. Candidates shall be required to file the statement no later than twenty-one (21) days after the filing date or the date of nomination. Newly appointed officers and employees should be required to file their initial statement no later than twenty-one (21) days after date of appointment, or April 15, 1996, whichever shall last occur.

SECTION 8: Noncompliance With Filing Requirement.

(A) The Board of Ethics, or the designated administrative official, shall notify by certified mail each person required to file a statement of financial interests who fails to file the statement by the due date, files an incomplete statement, or files a statement in a form other than that prescribed by the Board. The notice shall specify the type of failure or delinquency,

shall establish a date by which the failure or delinquency shall be remedied, and shall advise the person of the penalties for a violation.

(B) Any person who fails or refuses to file the statement or who fails or refuses to remedy a deficiency in the filing identified in the notice under subsection (A) within the time period established in the notice shall be guilty of a civil offense and shall be subject to a civil fine imposed by the Board in an amount not to exceed twenty-five dollars (\$25.00) per day, up to a maximum total civil fine of five hundred dollars (\$500.00). Any civil fine imposed by the Board under this section may be recovered by the city in a civil action in the nature of debt if the offender fails or refuses to pay the penalty within a prescribed period of time. Court costs and reasonable attorney fees may also be recovered.

(C) Any person who intentionally files a statement of financial interests which he or she knows to contain false information or intentionally omits required information shall be guilty of a Class A misdemeanor.

NEPOTISM

SECTION 9: Nepotism. No city officer or city employee shall act in his/her official capacity to hire or cause to be hired any member of his/her immediate family to any paid position at an hourly pay rate or with benefits in excess of any other employee with similar job duties, responsibilities and qualification requirements.

ENFORCEMENT

SECTION 10: Board of Ethics Created.

(A) There is hereby created a Board of Ethics which shall have the authorities, duties, and responsibilities as set forth in this ordinance to enforce the provisions of this ordinance.

(B) The Board of Ethics shall consist of three (3) members who shall be appointed by the City Commission. The initial members of the Board of Ethics shall be appointed within sixty (60) days of the effective date of this ordinance. No member of the Board of Ethics shall hold any elected or other appointed office, whether paid or unpaid, or any position of employment with the city or any city agency. The members shall serve for a term of three (3) years; except that with respect to the members initially appointed, one (1) member shall be appointed for a term of one (1) year, one (1) member shall be appointed for a term of two (2) years and, and one (1) member shall be appointed for a term of three (3) years. Thereafter, all appointments shall be for a term of three (3) years. Each member of the Board of Ethics shall be a resident of the city and shall reside in the city throughout the term in office. The members may be re-appointed for any number of consecutive terms.

(C) A member of the Board of Ethics may be removed by the City Commission for misconduct, inability, or willful neglect of duties. Before any member of the Board of Ethics is removed from office under this section, the member shall be afforded the opportunity for a hearing before the Commission.

(D) Vacancies on the Board of Ethics shall be filled within sixty (60) days by the City Commission. If a vacancy is not filled by the Commission within sixty (60) days, the remaining members of the Board of Ethics shall fill the vacancy. All vacancies shall be filled for the remainder of the unexpired term.

(E) Members of the Board of Ethics shall serve without compensation, unless otherwise approved by the City Commission, but shall be reimbursed for all necessary and reasonable expenses incurred in the performance of their duties.

(F) The Board of Ethics shall, upon the initial appointment of its members, and annually thereafter, elect a chairperson from among the membership. The chairperson shall be the presiding officer and a full voting member of the Board.

(G) Meetings of the Board of Ethics shall be held, as necessary, upon the call of the chairperson or at the written request of a majority of the members.

(H) The presence of two (2) or more members shall constitute a quorum and the affirmative vote of two (2) or more members shall be necessary for any official action to be taken. Any member of the Board of Ethics who has a conflict of interest with respect to any matter to be considered by the Board shall disclose the nature of the conflict, shall disqualify himself or herself from voting on the matter, and shall not be counted for purposes of establishing a quorum.

(I) Minutes shall be kept for all proceedings of the Board of Ethics and the vote of each member on any issue decided by the Board shall be recorded in the minutes.

SECTION 11: Power and Duties of the Board of Ethics. The Board of Ethics shall have the following powers and duties:

(A) The Board of Ethics is established to enforce the provisions of this code of ethics. The Board of Ethics shall, on the written request of any official, candidate, nominee or employee coming under the code of ethics, render advisory opinions concerning the provisions of this code of ethics. The Board may, at its discretion, publish its advisory opinion with such deletions as may be necessary to prevent disclosure of the individual or individuals involved or concerned.

(B) The board shall receive, hear and investigate complaints concerning violations of this code of ethics. In any instance in which the Board of Ethics finds that a violation of the code of ethics exists, the Board may impose the appropriate penalty. In hearing and investigating complaints concerning violations of this code of ethics, the Board shall have the power to subpoena witnesses, administer oaths, take testimony and require other productions of evidence. The Board shall also control and maintain all statements of financial interests and make sure that they are available for public inspection in accordance with the Kentucky Open Records Act.

(C) Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the board of Ethics shall be guilty of a Class A misdemeanor.

SECTION 12: Filing and Investigation of Complaints.

(A) All complaints alleging any violation of the provisions of this ordinance shall be submitted to the Board of Ethics, or the administrative official designated by the Board of Ethics. All complaints shall be in writing, signed by the complainant, and shall meet any other requirements established by the Board of Ethics. The Board of Ethics shall acknowledge receipt of a complaint to the complainant within ten (10) working days from the date of receipt. The Board shall forward within ten (10) working days to each officer or employee of the city or city agency who is the subject of the complaint a copy of the complaint and a general statement of the applicable provisions of this ordinance.

(B) Within thirty (30) days of the receipt of a proper complaint, the Board of Ethics shall conduct a preliminary inquiry concerning the allegations contained in the complaint. The Board shall afford a person who is the subject of the complaint an opportunity to respond to the allegations in the complaint. The person shall have the right to be represented by counsel, to appear and be heard under oath, and to offer evidence in response to the allegations.

(C) All proceedings and records relating to a preliminary inquiry being conducted by the Board of Ethics shall be confidential until a final determination is made by the Board except:

(1) The Board may turn over to the Commonwealth's attorney or county attorney evidence which may be used in criminal proceedings.

(2) If the complainant or alleged violator publicly disclose the existence of a preliminary inquiry, the Board may publicly confirm the existence of the inquiry, and, at its discretion, make public any documents which were issued to either party.

(D) The Board shall make a determination based on its preliminary inquiry whether the complaint is within its jurisdiction and, if so, whether it alleges a minimal factual basis to constitute a violation of this ordinance. If the Board concludes that the complaint is outside of its jurisdiction, frivolous or without factual basis, the Board shall immediately terminate the inquiry, reduce the conclusion to writing, and transmit a copy of its decision to the complainant and to all officers or employees against whom the complaint was filed.

(E) If the Board of Ethics concludes, based upon its preliminary inquiry, that the complaint is within its jurisdiction and contains allegations sufficient to establish a minimal factual basis to constitute a violation, the Board shall notify the officer or employee who is the subject of the complaint and may:

(1) Due to mitigating circumstances such as, lack of significant economic advantage or gain by the officer or employee, lack of economic loss to the city and its taxpayers, or lack of significant impact on public confidence in city government issue,

in writing, a confidential reprimand to the officer or employee concerning the alleged violation and provide a copy of the confidential reprimand to the City Commission.

(2) Initiate a hearing to determine whether there has been a violation.

(F) Any person who knowingly files with the Board a false complaint alleging a violation of any provision of this ordinance by an officer or employee of the city or any city agency shall be guilty of a Class A. misdemeanor.

SECTION 13: Notice of Hearings. If the Board of Ethics determines that a hearing regarding allegations contained in the complaint is necessary, the Board shall issue an order setting the matter for a hearing within thirty (30) days of the date the order is issued, unless the alleged violator petitions for and the Board consents to a later date. The order setting the matter for hearing, along with a copy of any pertinent regulations of the Board relating to the hearing shall be sent to the alleged violator within twenty-four (24) hours of the time the order setting a hearing is issued.

SECTION 14: Hearing Procedure.

(A) The Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence shall not apply to hearings conducted by the Board of Ethics; however, the hearing shall be conducted in accordance with this section and in accordance with any additional rules and regulations adopted by the Board so as to afford all parties the full range of due process rights required by the nature of the proceedings.

(B) Prior to the commencement of the hearing, the alleged violator, or his or her representative, shall have a reasonable opportunity to examine all documents and records obtained or prepared by the Board in connection with the matter to be heard. The Board shall inform the alleged violator, or his or her representative, of any exculpatory evidence in its possession.

(C) All testimony in a Board hearing shall be taken under oath, administered by the presiding officer. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses, to submit evidence, and to be represented by counsel. All witnesses shall have the right to be represented by counsel.

(D) Any person whose name is mentioned during the hearing and who may be adversely affected thereby may appear personally before the Board, with or without counsel, to give a statement regarding the adverse mention, or may file a written statement regarding the adverse mention for incorporation into the record of the proceeding.

(E) All hearings of the Board of Ethics shall be public, unless the members vote to go into executive session in accordance with KRS 61.180.

(F) After the conclusion of the hearing, the Board of Ethics shall, as soon as practicable, begin deliberations in executive session for the purpose of reviewing the evidence

before it and making a determination whether a violation of this ordinance has been proven. Within thirty (30) days after completion of the hearing, the Board shall issue a written report of its findings and conclusions.

(G) If the Board concludes in its report that no violation of this ordinance has occurred, it shall immediately send written notice of this determination to the officer or employee who was the subject of the complain and to the party who filed the complaint.

(H) If the Board concludes in its report that in consideration of the evidence produced at the hearing there is clear and convincing proof of violation of this ordinance, the Board may:

(1) Issue an order requiring the violator to cease and desist the violation.

(2) In writing, publicly reprimand the violator for the violations and provide a copy of the reprimand to the City Commission.

(3) In writing, recommend to the City Commission that the violator be sanctioned as recommended by the Board, which may include a recommendation for discipline or dismissal, or removal from office.

(4) Issue an order requiring the violator to pay a civil penalty of not more than \$1,000.00.

(5) Refer evidence of criminal violations of this ordinance or state laws to the county attorney or commonwealth's attorney of the jurisdiction for prosecution.

SECTION 15: Appeals. Any person who is found guilty of a violation of any provision of this ordinance by the Board of Ethics may appeal the finding to the circuit court of the county within thirty (30) days after the date of the final action by the Board of Ethics by filing a petition with the court against the Board. The Board shall transmit to the clerk of the court all evidence considered by the Board at the public hearing.

SECTION 16: Limitation of Actions. Except when the period of limitation is otherwise established by state law, an action for a violation of this ordinance must be brought within one (1) year after the violation is discovered.

SECTION 17: Penalties.

(A) Except when another penalty is specifically set forth in this ordinance, any officer or employee of the city or city agency who is found by the Board of Ethics to have violated any provision of this ordinance shall deemed guilty of a civil offense and may be subject to a civil fine imposed by the Board of Ethics not to exceed one thousand dollars (\$1,000.00), which may be recovered by the city in a civil action in the nature of debt if the offender fails to pay the penalty within a prescribed period of time. Court costs and attorney fees may also be recovered.

(B) In addition to all other penalties which may be imposed under this ordinance, any officer or employee of the city or any city agency who is found by the Board of Ethics to have violated any provision of this ordinance shall forfeit to the city or the city agency an amount equal to the economic benefit or gain which the officer or employee is determined by the Board to have realized as a result of the violation. The amount of any forfeiture may be recovered by the city in a civil action in the nature of debt, if the offender fails to pay the amount of the forfeiture within a prescribed period of time. Court costs and attorney fees may also be recovered.

(C) In addition to all other penalties which may be imposed under this ordinance, a finding by the Board of Ethics that an officer or employee of the city or any city agency is guilty of a violation of this ordinance shall be sufficient cause for removal, suspension, demotion, or other disciplinary action by the City Commission or by any other officer or agency having the power of removal or discipline. Any action to remove or discipline any officer or employee for a violation of this ordinance shall be taken in accordance with all applicable ordinances and regulations of the city and all applicable laws of the Commonwealth of Kentucky.

SECTION 18: Severability. If any provision of this ordinance is deemed by a court of competent jurisdiction to be unenforceable or unconstitutional, the remaining provisions of this ordinance shall continue in full force and effect.

SECTION 19: Conflicting Ordinances Repealed. All other ordinances and parts of ordinances in conflict with this ordinance are hereby repealed to the extent of the conflict.

SECTION 20: Effective Date. This ordinance shall take full force and effect on January 1, 1995 and publication shall be as required by KRS 83A.060.

First Reading: Sept 1, 1994

Second Reading: Dec. 1, 1994

Certified Summary of Ordinance Published: _____

Louis Wommer Mayor
LOUIS WOMMER, MAYOR
CITY OF KINGSLEY, KENTUCKY

ATTEST:

Rosemary Hamman
CITY CLERK

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