



**Restrictions on  
Election Day  
Practices and  
Lobbying  
Regulations**



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# ELECTION DAY PRACTICES

- ▶ Electioneering
- ▶ Vote Buying
- ▶ Vote Hauling
- ▶ Poll Challengers

# ELECTIONEERING

# ELECTIONEERING

WHAT DOES ELECTIONEERING  
EVEN MEAN?

# ELECTIONEERING

- ▶ Merriam Webster's defines electioneer as:
  - ▶ “to take an active part in an election; *specifically* : to work for the election of a candidate or party.”

# ELECTIONEERING

- ▶ Kentucky specifically prohibits electioneering with the following provisions:
  - ▶ §117.235(2)
    - ▶ *No officer of election shall do any electioneering on election day.*

# ELECTIONEERING

- ▶ §117.235 (3):

- ▶ No person shall electioneer at the polling place on the day of any election *within a distance of three hundred (300) feet* of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters on election day, unless the fiscal court or legislative body of an urban-county, charter county, or consolidated local government, on a countywide basis, specifically prohibits electioneering on the day of any election by ordinance for a distance greater than three hundred feet from the polling place.



# ELECTIONEERING

- ▶ §117.235 (3) con't:
  - ▶ No person shall electioneer within the interior of a building or affix any electioneering materials to the exterior or interior of a building where the county clerk's office is located, or any building designated by the county board of elections and approved by the State Board of Elections for absentee voting, during the hours absentee voting is being conducted in the building by the county clerk pursuant to KRS 117.085(1)(c).

# ELECTIONEERING

- ▶ §117.235 (3) con't:
  - ▶ Electioneering shall include the displaying of signs, the distribution of campaign literature, cards, or handbills, the soliciting of signatures to any petition, or the solicitation of votes for or against any bona fide candidate or ballot question in a manner which expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question, but shall not include exit polling or other exceptions established by the State Board of Elections through the promulgation of administrative regulations.

## ELECTIONEERING

**BUT HOW DOES  
THE STATUTE WORK  
IN PRACTICE?**

# ELECTIONEERING

- ▶ 2008 Kentucky Democratic Race for Senate:
  - ▶ Greg Fischer sought for the democratic Senate nomination against Bruce Lunsford, hoping to face Senator Mitch McConnell in the general election.
  - ▶ Fischer was kicked out of his polling location for illegally electioneering on the day of the Senate primary election.

# ELECTIONEERING

- ▶ Greg Fischer:
  - ▶ <http://pageonekentucky.com/2008/05/20/we-voted-this-morning-did-you/>

# ELECTIONEERING

- ▶ In 2010, Rand Paul supporters were accused of electioneering during his Senate race.
- ▶ [http://media.kentucky.com/smedia/2010/05/18/12/img003.source.prod\\_affiliate.79.pdf](http://media.kentucky.com/smedia/2010/05/18/12/img003.source.prod_affiliate.79.pdf)

# ELECTIONEERING

- ▶ **HOW TO AVOID ELECTIONEERING VIOLATIONS:**
  - ▶ Ensure that any signage, advertisements, or other campaign materials are placed at least 300 feet from the entrances to polling places.
  - ▶ Ensure that campaign supporters are not publicly advocating for candidates in or around polling places.
  - ▶ Prevent any candidates or candidate support staff from interacting with the media in or around polling places.

# VOTE BUYING



# VOTE BUYING



**COMMONWEALTH OF KENTUCKY  
STATE BOARD OF ELECTIONS**

**VOTE  
BUYING AND SELLING  
ARE ILLEGAL**

**NOTICE OF PENALTIES**

KRS 119. 205. Making or receiving expenditure for vote or withholding of vote - Definition of "expenditure" - Procedures for paying for transportation of voters - Applicability of KRS 502.020.

# VOTE BUYING

- ▶ **WHAT IS VOTE BUYING?**

- ▶ Any reward given to a person for voting in a particular way or for not voting can be called vote buying.

# VOTE BUYING

- ▶ The US Federal Government broadly prohibits vote buying, and Kentucky has an additional statute to ban the practice:
  - ▶ 42 USCS §1973i(c)
  - ▶ KRS §119.205b

# VOTE BUYING

- ▶ **KRS §119.205b:**

- (1) Any person who makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate or public question at an election shall be guilty of a Class D felony.
- (2) Any person who solicits, accepts, or receives any such expenditure as payment or consideration for his vote, or the withholding of his vote, or to vote for or against any candidate or public question at an election shall be guilty of a Class D felony.

# VOTE BUYING

- ▶ KRS §119.205b:

(3) Any person who makes or offers to make an expenditure to any person to sign a petition to have a public question placed on the ballot, or any person who solicits, accepts, or receives any such expenditure as payment or consideration to sign a petition to have a public question placed on the ballot, shall be guilty of a Class B misdemeanor.

## VOTE BUYING

- ▶ For purposes of KRS §119.205b, "expenditure" means any of the following when intended as payment or consideration for voting or withholding a vote, voting for or against any candidate or public question, or signing a petition to have a public question placed on the ballot:
  - (a) A payment, distribution, loan, advance, deposit, or gift of money or anything of value; or
  - (b) A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a payment, distribution, loan, advance, deposit, or gift of money or anything of value.

## VOTE BUYING

- ▶ "Expenditure," as used in KRS §119.205b, shall not include the distribution of materials bearing the name, likeness, or other identification of a candidate, political party, committee, or organization, or position on a public question and not intended as payment or consideration for voting or withholding a vote, voting for or against any candidate or public question, or signing a petition to have a public question placed on the ballot.

# VOTE BUYING

- ▶ Kentucky has historically faced many issues with vote buying.
  - ▶ In 2010, a jury convicted eight people, including a former Circuit Judge and a former school Superintendent on a charge that they engaged in organized criminal acts to rig elections.
  - ▶ After a seven-week trial, jurors deliberated approximately nine hours before convicting the defendants on all charges they faced, including vote-buying, mail fraud, extortion and money laundering.
  - ▶ In 2013, the Sixth Circuit ordered new trials for the eight convicted of vote buying, but two later plead guilty to the charges. The remaining trials are pending.



## VOTE BUYING

- ▶ Kentucky prosecutors acknowledge that vote buying is historically a commonly accepted practice, particularly in Eastern Kentucky.
- ▶ In 2012, for example, an Eastern Kentucky resident confessed that he had sold his vote in a local magistrate race at the request of a candidate.
- ▶ In that case, he made \$100 for selling his vote.

## VOTE BUYING

- ▶ Drug money has been infused into the vote buying.
- ▶ Prosecutors say more than \$400,000, part of it drug proceeds, was pooled by Democratic and Republican politicians over several elections, and spent to buy the votes of more than 8,000 voters, usually at \$50 a piece
- ▶ One voter was able to bid up the cost of his vote to \$800.

# VOTE BUYING

- ▶ HOW TO AVOID VOTE-BUYING:
- ▶ Probably the most obvious solution: DON'T BUY VOTES!
- ▶ Unlike some of the other issues, this is the most straightforward. The law is not complex or convoluted on this issue. Don't give any money or gifts in exchange for a citizen's agreement to vote for a particular candidate.

# VOTE HAULING

# VOTE HAULING

## ▶ WHAT IS VOTE HAULING?

- ▶ Money is paid by campaigns to individuals to “haul” voters to the polls.

# VOTE HAULING

- ▶ In Kentucky, vote hauling is *not* illegal.
  - ▶ However, vote *buying* as mentioned previously IS still illegal.
- ▶ Vote hauling payments must be made by check and reported.
- ▶ Otherwise, there are no other restrictions on Kentucky vote hauling.

# VOTE HAULING

- ▶ **HOW TO AVOID ISSUES WITH VOTE HAULING:**
  - ▶ Only use vote hauling for its intended purposes, i.e. to help disabled or disadvantaged voters get to polling locations.
  - ▶ Properly instruct those hauling votes to drive voters to the polls without offering to buy their votes or trying to coerce them into voting in any particular way.
  - ▶ Don't offer money to vote haulers based on the number of votes that they "recruit."



# POLL CHALLENGERS



# POLL CHALLENGERS

## WHAT IS A POLL CHALLENGER?

- ▶ Challenger laws allow private citizens to contest the eligibility of individual voters, either on or before Election Day.
- ▶ Challenges are typically based on allegations that a particular voter lacks some requisite voting qualification, such as citizenship or precinct residency.
- ▶ Although these laws have been around for centuries, political operatives have relied on them with greater frequency recently.

## POLL CHALLENGERS

- ▶ Kentucky allows poll challengers, but they must be on a list submitted to the chair or secretary of the party committee beforehand.
- ▶ Kentucky statute regulates the appointment, the duties, and the actions prohibited of challengers.

# POLL CHALLENGERS

- ▶ KRS §117.315b Appointment of challengers and inspectors.
  - ▶ Each political party is entitled to have not exceeding two challengers at each precinct during the holding of the primary election.
  - ▶ If more than two such lists are furnished, the committee or governing authority, in making appointments of challengers, shall alternate between the several lists so furnished so as to give to each list an equal amount or proportion of the appointments, but in no event shall there be appointed more than one challenger for any precinct from any one list.

## POLL CHALLENGERS

- ▶ KRS §117.315b con't:
  - ▶ The challengers shall be registered voters of the county in which the primary is held and shall be subject to the same penalties and possess the same rights and privileges as challengers at regular elections, except that the challengers of one political party shall not be entitled to challenge persons who offer to vote for candidates of any other party in the primary.

# POLL CHALLENGERS

- ▶ **KRS §117.316b Duties of challenger:**
  - ▶ The duties of a challenger appointed and certified as provided in KRS 117.315 shall include:
    - (1) The challenge of the eligibility of a voter who presents himself at the precinct to vote, but who the challenger has reason to believe:
      - ▶ (a) Is not a duly registered voter in the precinct;
      - ▶ (b) Is not a resident of the precinct;
      - ▶ (c) Is a convicted felon who has not had his civil rights restored; or
      - ▶ (d) Is not the person he claims to be.
    - (2) If the challenger attempts to challenge a person's right to vote, he shall express his challenge to the precinct election officer; he shall sign the oath of voter executed by the voter if the voter's name appears on the precinct

## POLL CHALLENGERS

- ▶ **KRS §117.317b Acts prohibited to challengers:**
  - ▶ A challenger appointed and certified as provided in KRS 117.315 shall not:
    - (1) Electioneer or campaign on behalf of any candidate, issue, or political party;
    - (2) Handle official election materials except as provided in KRS 117.187;
    - (3) Attempt to intimidate or harass, verbally or otherwise, any voter who is being challenged or any precinct election officer;
    - (4) Behave in any manner to disrupt activities at the polling place; or
    - (5) Attempt to interfere with the proper conduct of the election.

# LOBBYING RESTRICTIONS

- ▶ FEDERAL REGULATIONS
- ▶ KENTUCKY REGULATIONS

# FEDERAL LOBBYING RESTRICTIONS

- ▶ Lobbying is a First Amendment protected activity under the U.S. Constitution.
- ▶ But lobbying is a regulated industry, governed by federal statute focused on registration and reporting requirements
- ▶ Primary federal law governing lobbying is **the Lobbying Disclosure Act of 1995 (LDA)** with technical amendments and some additional changes by the **Honest Leadership Open Government Act of 2007 (HLOGA)**
- ▶ LDA provides broad rules for disclosure for lobbying activities covering both the legislative *and* executive branches



## BUT WHAT IS A LOBBYIST?

- ▶ A lobbyist is an individual who:
  - ▶ is employed or retained by a client for **financial or other compensation**
  - ▶ whose services include **more than one** lobbying contact
  - ▶ whose lobbying activities constitute **20 percent** or more of his or her services' time on behalf of that client during any **three month period**
- ▶ All three prongs must be met

# KENTUCKY LOBBYING RESTRICTIONS

- ▶ There are two types of lobbying in the Commonwealth of Kentucky:
  - ▶ Legislative Lobbying
  - ▶ Executive Agency Lobbying
- ▶ The distinction between the two types of lobbying is based upon subject matter: legislation or executive agency decisions.

## WHAT IS LEGISLATIVE LOBBYING?

- ▶ If you are attempting to promote, advocate, or oppose the passage, modification, defeat, or executive approval or veto of any bill, resolution, amendment, nomination, or any other matter pending before the General Assembly, executive approval or veto of any bill acted upon by the General Assembly, then you are conducting Legislative Lobbying and you must register as a legislative agent.

## WHO IS A LEGISLATIVE LOBBYIST?

- ▶ An individual who is engaged during at least a portion of his/her time to lobby as one of his/her official responsibilities or who is engaged in lobbying activities as a legislative liaison of an association, coalition, or public interest entity formed for the purpose of promoting or otherwise influencing legislation. [KRS [6.611\(22\)\(a\)](#)]
  - ▶ "Engaged" means employed or retained for compensation to lobby. [KRS [6.611\(13\)](#)]
  - ▶ "Compensation" means a salary or its equivalent. [KRS [6.611\(10\)](#)]

## WHO IS NOT A LEGISLATIVE LOBBYIST?

- ▶ Any person who limits lobbying to appearing before public meetings;
- ▶ A private citizen who receives no compensation for lobbying and who expresses a personal opinion;
- ▶ A public servant acting in his/her fiduciary capacity, with exceptions specified by statute.

## WHAT IS EXECUTIVE AGENCY LOBBYING?

- ▶ If you are attempting to promote, oppose, or otherwise influence the outcome of an executive agency decision, then you are conducting Executive Agency Lobbying and you must register as an executive agency lobbyist.

## WHO IS AN EXECUTIVE AGENCY LOBBYIST?

- ▶ An **executive agency lobbyist (EAL)** is any **person** who is employed or **engaged** to influence **executive agency decisions** or to conduct executive agency lobbying activity as one of his main purposes on a **substantial basis**.

## BUT WHAT DOES THAT MEAN?

- ▶ **Engage** means to make any arrangement, and "engagement" means any arrangement, whereby an individual is employed or retained for **compensation** to act for or on behalf of an employer to influence executive agency decisions or to conduct any executive agency lobbying activity.
- ▶ **Compensation** means any money, thing of value, or economic benefit conferred on, or received by, any person in return for service rendered, or to be rendered by himself or another.
- ▶ **Executive Agency Decision** means a decision of an **executive agency** regarding the expenditure of funds of the state or of an executive agency with respect to the award of a contract, grant, lease, or other financial arrangement under which such funds are distributed or allocated.
- ▶ **Executive Agency** means the office of an elected executive official, a cabinet listed in [KRS 12.250](#) or any other state agency, department, board, or commission controlled or directed by an elected executive official or otherwise subject to his authority. "Executive agency" does not include any court or the General Assembly.



- ▶ **Executive Agency Lobbying Activity** means contacts made to promote, oppose, or otherwise influence the outcome of an executive agency decision by direct communication with an elected executive official, the secretary of any cabinet listed in [KRS 12.250](#), any **executive agency official**, or a member of the **staff** of any of the officials listed in this paragraph.
- ▶ **Person** means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in concert.
- ▶ **Executive Agency Official** means an officer or employee of an executive agency whose principal duties are to formulate policy or to participate directly or indirectly in the preparation, review, or award of contracts, grants, leases, or other financial arrangements with an executive agency.
- ▶ **Staff** means any employee of the office of the Governor, or cabinet official listed in [KRS 12.250](#), whose official duties are to formulate policy and who exercises administrative or supervisory authority or who authorizes the expenditure of state funds.
- ▶ **Substantial Basis** means contacts which are intended to influence a decision that involves one or more disbursements of state funds in an amount of at least five thousand dollars (\$5,000) per year.

# WHO SHOULD REGISTER AS AN EXECUTIVE AGENCY LOBBYIST?

- ▶ Based on the person's activity:
- ▶ Must register if a person is engaged by an employer on a substantial basis, as one of his or her main purposes, to influence executive agency decisions or to conduct executive agency activity by direct communication.
- ▶ The question that often arises is what does the phrase "on a substantial basis, as one of his or her main purposes" mean. In other words, at what point have you performed sufficient activity to warrant registration as an executive agency lobbyist?
- ▶ As a rule of thumb, if you have made direct contact at least two times during a calendar year, for the purpose of influencing an executive agency decision involving state funds of at least \$5,000 per year, you should be registered as an executive agency lobbyist.

# Questions & Comments

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