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OAG 25-04

Subject: May an employee of a Kentucky coal producer who has been appointed to the Energy Planning and Inventory Commission (“EPIC”) serve on the EPIC executive committee where the member’s employer has contracts with one or more utilities to supply coal?

Requested by: Rodney Andrews, PhD PE
Executive Director, EPIC

Written by: Christopher L. Thacker,
General Counsel

Syllabus: So long as the EPIC member individually does not have “any current employment, contractual, or other direct financial relationship with any utility,” other than as a customer, the individual may serve on the executive committee if selected to do so. To impute the employer’s relationship to the employee would be contrary to both the express text and purpose of the statute.

Opinion of the Attorney General

Dr. Rodney Andrews as executive director of the Energy Planning and Inventory Committee (“EPIC”) and on behalf of EPIC seeks an opinion regarding the statutory eligibility of a member of the board of EPIC to serve on its executive committee if selected to do so. The executive committee is composed of five individuals including two EPIC board members who are selected by a vote of the full board. KRS 164.2807(4)(b)4.

The relevant facts, as set forth in Dr. Andrews’ opinion request, are as follows:

A member of EPIC appointed pursuant to [KRS 164.2807(4)(a)(3)] by Governor Andy Beshear by Executive Order as the representative of the Kentucky coal

producers, nominated by the Kentucky Coal Association, is a candidate to serve on the EPIC executive committee if elected by the EPIC board. This member was an employee of a Kentucky coal producer at the time of his appointment as a member of EPIC and remains an employee of that Kentucky coal producer. The member is not currently an employee of any utility, has no contractual relationship with any utility, and has no other direct financial relationship with any utility other than as a customer of retail electric service.

The member’s coal producer employer has contracts with one or more utilities to supply coal. Likewise, many other EPIC board members may be employees or representatives of entities that have contracts with utilities, even though the individual member may not.

KRS 164.2807(4)(g) provides the following limitation as to who can serve on the EPIC executive committee:

Other than being a customer of retail electric service, no member of the executive committee shall have any current employment, contractual, or other direct financial relationship with any utility at the time of their appointment or during their service on the executive committee.

As with all matters of statutory construction, our analysis begins with the words the General Assembly used. *See Conn v. Kentucky Parole Board*, 701 S.W.3d 76, 82 (Ky. 2024)(“Statutes are to be construed as they are written, and ‘the intent of the Legislature must be deduced from the language it used, when it is plain and unambiguous[.]’”(internal citation omitted). Here the relevant statutory limitation is specific to the members of the executive committee individually—“no member of the executive committee shall have any current employment, contractual, or other direct financial relationship with any utility.”

The absence of any express or implied limitation based upon the member’s employer (except where the employer is itself a utility) is particularly telling given that the statute requires most members of the EPIC board to have a substantial relationship with the energy industry. Of the eighteen board members, two are representatives of utilities (one from an investor-owned and another from a cooperative), while the others include representatives of “Kentucky coal producers,” “Kentucky oil and gas producers,” businesses engaged in the transportation of coal and natural gas, and nominees of Kentucky Industrial Utility Customers, the Kentucky Chamber of

Commerce, and the Kentucky Banker’s Association. Nothing in the text of KRS 164.2807 suggests that such members would be excluded from service on the executive committee because of an indirect relationship with a utility. Indeed, adding such an interpretive gloss would not only be inconsistent with the text of KRS 164.2807(4)(g) but would make it difficult, if not impossible, to select qualifying members for the executive committee from among the eighteen total board members.

Moreover, it would be contrary to the expressed intent of the General Assembly in enacting the statute. “[T]he intent of the legislature is the lodestar by which we are guided. No interpretation of a statutory text can be called correct if it has not the General Assembly’s purpose at its beginning and end.” *Normandy Farm, LLC v. Kenneth McPeck Racing Stable, Inc.*, 701 S.W.3d 129, 136 (Ky. 2024). Here, in addition to the operative statutory text, the General Assembly has included a relevant declaration of legislative purpose to guide construction of the statute. The declaration of intent concludes by stating:

The numerous energy policy challenges facing the Commonwealth require a comprehensive energy policy informed by the input, judgment, experience, and expertise of diverse stakeholders representing a variety of interests and energy resources, including but not limited to coal, oil, natural gas, wind, solar, hydropower, nuclear, and any future or emerging resources to achieve the best results for the citizens of the Commonwealth.

KRS 164.2807(1)(p). This statement of intent reinforces the conclusion that the General Assembly specifically wanted individuals with personal involvement and experience in the energy industry to serve in EPIC.

To expand the limitation on service on the executive committee beyond the express scope of the text of KRS 164.2807(4)(g) by applying it to EPIC board members whose non-utility employers have a contractual relationship with a utility would exclude from leadership members with precisely the kind of expertise that the General Assembly sought. This would frustrate rather than advance the General Assembly’s intent. Accordingly, the EPIC board member nominated by the Kentucky Coal Association is not prevented from serving on the executive committee if selected to do so because of the contracts that the member’s coal producer employer has with one or more utilities.

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