

Ethical & Legal Issues for PUC

- *U.S. Case Study*

**Presentation by Chair Brian Moline
Kansas Corporation Commission, Topeka, Kansas**

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Purpose

To assure that all KCC employees and officials adhere to the highest ethical standards.

Goal

To provide general definitions concerning what types of situations may create a conflict of interest.

Disclosure

- Any and all direct or indirect financial relationships with any entity regulated by Commission.
- Conflict of interest should be reported immediately to supervisor or division director.

Prior Employment by a Regulated Entity

- One year separation from a previous regulated entity.
- Confidential information obtained from prior employer cannot be divulged.

Exceptions

- Matter is of a technical, standard, routine or non-controversial nature.
- Lack of sufficient staff, work monitored closely by immediate supervisor.

Ownership of Interest in a Regulated Entity

Any employee required to file a written statement of substantial interest, shall not own any property interest in any public utility or other entity regulated by the Commission. An employee may own a passive mineral interest or mutual funds if that employee cannot or does not exercise any control over the investment.

Post Employment Restrictions

- Former employees may not appear before the Commission as a witness, nor enter an appearance as attorney of record, in any matter in which they were directly involved.
- Former employees shall not divulge or impart any confidential or otherwise privileged information when that information came to the former employee's attention by reason of their employment.

Commission Attorneys

All attorneys employed by the Commission shall also be subject to the Model Rules of Professional Conduct.

MRPC 1.11 (a) – a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation.

- (1) private litigants generally barred from raising. FDIC v Frazier, 637 F. Supp 77, 79 (D. Kansas, 1986)
- (2) when former agency is not a party, answer is unclear, Davis v SW Bell, 147 F.R.D. 666 (S.D. Fla. 1993)

MRPC 1.11(b) – creates similar prohibitions against use of “confidential government information”.

- (1) former government lawyers cannot use information obtained in their official capacity about a party to the material disadvantage of that party in a subsequent proceeding.
- (2) Unlike a Rule 1.11 (a) violation, a Rule 1.11 (b) violation cannot be cured by informed consent of the former government client because the privilege is much broader and belongs to an affected third party.

- (3) “confidential government information”
defined

“information which has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, or which is not otherwise available to the public.”

■ (4) Under the provision of K.S.A. 74-605, attorneys employed by the Commission shall not hold

(a) any office of profit or,

(b) any position under any committee of any political party, or

(c) any other position of honor, profit or trust under or by virtue of any laws of the United States or of the state of Kansas.