

**SMITHS GROVE CITY COMMISSION
ORDINANCE NUMBER 14-006 210.10**

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**AN ORDINANCE REESTABLISHING A CODE OF ETHICAL CONDUCT APPLICABLE TO
THE OFFICERS AND EMPLOYEES OF THE CITY AND CITY AGENCIES OF SMITHS
GROVE, KENTUCKY**

*** **

WHEREAS; the General Assembly of the Commonwealth of Kentucky has enacted legislation, Kentucky Revised Statute 65.003, requiring the city to enact and enforce a code of ethics governing the conduct of city officers and employees; 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 desires to comply with all requirements of the Commonwealth's local government ethics law; and

WHEREAS, Ordinance 94-1 210.1, effective November 29th 1994, needs to be updated and corrected.

NOW, THEREFORE, Be it ordained by the Commission of the City of Smiths Grove, Kentucky that:

- Ordinance Number 94-1 210.1 is hereby repealed in its entirety
- Ordinance Number 14-006 210.1 reestablishes the City of Smiths Grove Code of Ethics law:

SECTION 1. Title.

This ordinance shall be known and may be cited as the "City of Smiths Grove Code of Ethics."

SECTION 2. Findings.

The legislative body of the City of Smiths Grove finds and declares that:

- (A) Public office and employment with the city are public trusts.
- (B) The vitality and stability of the government of this city depends upon the public's confidence in the integrity of its elected and appointed officers and employees. Whenever the public receives a conflict between the private interests and the public duties of a city officer or employee that confidence is imperiled.
- (C) The government of this city has a duty to provide its citizens with standards by which they determine whether public duties are being faithfully performed, and to make its officers and employees aware of the standards which the citizenry rightfully expects them to comply with while conducting their duties.

SECTION 3. Purpose and Authority.

- (A) It is the purpose of this ordinance to provide a method of assuring that standards of ethical conduct and financial disclosure requirements for officers and employees of the city shall be clearly established, uniform in their application, and enforceable, and to provide the officers and employees of the city with advice and information concerning potential conflicts of interest which might arise in the conduct of their public duties.
- (B) It is further the purpose of this ordinance to meet the requirements of KRS 65.003 as enacted by the 1994 Kentucky General Assembly.
- (C) This ordinance is enacted under the power vested in the city by KRS 82.082 and pursuant to requirements of KRS 65.003

SECTION 4. 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, or any legal entity through which business is conducted for profit.
- (B) "BOARD OF ETHICS" means the BARREN RIVER REGIONAL BOARD of ETHICS which is vested by this ordinance with the responsibility of enforcing the requirements of the city's code of ethics.
- (C) "CITY" refers to the city of Smiths Grove, Kentucky.
- (D) "CITY AGENCY" means any board, commission, authority non-stock corporation, or other entity created, either individually or jointly, by this city.
- (E) "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. The term "employee" shall not include any contractor or subcontractor or any of their employees.
- (F) "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.
- (G) "OFFICER" means any person, whether full-time or part-time, and whether paid or unpaid, who is one of the following:
 - (1) The Mayor
 - (2) A legislative body member.

- (3) The city Clerk.
- (4) Any person who occupies a nonelected office created under KRS 83A.080.
- (5) A member of the governing body of any city agency who has been appointed to the governing body of the agency by the city.

SECTION 5. 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 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 intentionally take or refrain from taking any discretionary action, or agree to take or refrain from taking any discretionary action, or induce or attempt to induce any other officer or employee to take or refrain from taking any discretionary action, on any matter before the city in order to obtain a financial benefit for any of the following:
 - (1) The officer or employee.
 - (2) An immediate family member.
 - (3) An outside employer.
 - (4) Any business in which the officer or employee, or any immediate family member has a financial interest.
 - (5) Any business with which the officer or employee or any immediate family member is negotiating or seeking prospective employment or other business or professional relationship.
- (D) 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 personal or financial benefit accrues to the officer or employee, an immediate family member, an outside employer, or a business as defined by subsection (C) (4) and (C) (5) of this section, as a member of any business, occupation, profession, or other group, to any greater extent than any gain could reasonably expect to accrue to any other member of the business, occupation, profession, or other group.

- (E) Every officer or employee who has a prohibited financial interest which the officer or employee believes or has reason to believe may be affected by his or her participation, vote, decision or other action taken within the scope of his or her public duties shall disclose the precise nature and value of interest, in writing, to the governing body of the city or city agency served by the officer or employee, and the disclosure shall be entered on the official record of the proceedings of the governing body. The officer or employee shall refrain from taking any action with respect to the matter that is the subject of disclosure.

SECTION 6. Conflicts of Interest in Contracts.

- (A) Pursuant to KRS 61.252, no officer or employee of the city or any 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 the elected official filed as a candidate for a city office, before an appointed officer as appointed to a city agency office, or before an appointment officer as appointed to a city agency office, or before an employee was hired by the city or a city agency. However, if any contract entered into by the city, 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 of 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 apart 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 agency because of price, limited supply, or other specific reasons.

(d) A 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 a 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 7. 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 having a fair market value of more than one hundred dollars (\$100), whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or any other form, 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 or her public duties.

SECTION 8. Use of Property Equipment, and Personnel.

No officer or employee of the city shall use or permit the use of any city time, funds, personnel, equipment, or other personal or real property for the use of any person unless:

- (A) The use is specifically authorized by a stated city policy.
- (B) The use is available to the general public, and then only to the extent and upon the terms that such use is available to the general public.

SECTION 9. Representation of Interests Before City Government.

- (A) No officer or employee of the city or any city agency shall represent any person or business, other than the city, in connection with any cause, proceeding, application or other matter pending before the city or city agency.
- (B) Nothing in this section shall prohibit an employee from representing another employee or employees where the representation is within the context of official labor union or similar representational responsibilities.
- (C) Nothing in this section shall prohibit any officer or employee from representing himself or herself in matters concerning his or her own interest.
- (D) No elected officer shall be prohibited by this section from making any inquiry for information on behalf of a constituent, if no compensation reward or other thing of value is promised to, given to, or accepted by the officer, whether directly or indirectly, in return for the inquiry.

SECTION 10. Misuse of Confidential Information.

No officer or employee of the city or any city agency shall intentionally use or disclose information acquired in the course of his or her official duties, if the primary purpose of the use or disclosure is to further his or her personal financial interest or that of another person or business. Information shall be deemed confidential, if it is not subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.872 to 61.884, at the time of its use or disclosure.

SECTION 11. Post-Employment Restriction.

No officer or employee of the city or any city agency shall appear or practice before the city or any city agency with respect to any matter on which the officer or employee personally worked while in the service of the city or city agency for a period of one (1) year after the termination of the officer's or employee's service with the city or city agency.

FINANCIAL DISCLOSURE

SECTION 12. Who must File.

The following classes of officers of the city and city agencies shall file an annual statement of financial interests with the BARREN RIVER REGIONAL BOARD OF ETHICS:

- (A) Elected city officials.
- (B) Candidates for elected office.

SECTION 13. When to File Statements, Amended Statements.

- (A) Pursuant to the Memorandum of Agreement between the city and the BARREN RIVER AREA DEVELOPMENT DISTRICT, statements of financial interest shall be filed with the BARREN RIVER BOARD OF ETHICS, c/o Barren River Area Development District Records Administrator no later than 3 p.m. on March 1 each year, provided that:
 - (1) An officer or employee newly required to fill an office or position with the city or city agency shall file his or her initial statement no later than thirty (30) days after the date of appointment.
 - (2) A candidate for city office shall file his or her initial statement no later than thirty (30) days after the date on which the person becomes a candidate for elected city office
- (B) The Barren River Regional Board of Ethics may grant a reasonable extension of time for filing a statement of financial interests for good cause shown.
- (C) In the event there is a material change as defined in the ordinance, in any information in a financial statement that has been filed with the Board, the officer or employee shall, no later than thirty (30) days after amended statement with the Board.

SECTION 14. Form of Statement of Financial Interests.

The statement of financial interests shall be filed on a form prescribed by the BARREN RIVER BOARD OF ETHICS. The Board shall deliver to the city a copy of the form for each officer and employee required to file the statement, no later than February 15 of each year. The failure to deliver the form shall not relieve the officer or employee of the obligation to file the statement.

SECTION 15. Control and Maintenance of the Statement.

- (A) The BARREN RIVER REGIONAL BOARD OF ETHICS shall be the "official custodian" of the financial statements. The statements of financial interest shall be maintained by the Board, or the Records Administrator designed by the Board as "custodian" of public documents, available for public inspection immediately upon filing.
- (B) A statement of financial interests shall be retained by the Board, or the "custodian", for a period of five (5) years after filing, provided that:
- (1) Upon the expiration of three (3) years after a person ceases to be an officer or employee of the city or city agency, the Board shall cause to be destroyed any statement of financial interests or copies of those statements filed by the person.
 - (2) Upon the expiration of three (3) years after any election at which a candidate for elected city office was not elected or nominated, the Board shall cause to be destroyed any statements of financial interests or copies of those statements filed by the person.

SECTION 16. Contents of the Financial Interests Statement.

- (A) The statement of financial interests shall include the following information of the preceding calendar year.
- (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 income of the filer and the filer's immediate family members exceeding five thousand dollars (\$5,000) 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.
- (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.

SECTION 17. Noncompliance With Filing Requirements.

- (A) The BARREN RIVER BOARD OF ETHICS, or the Records Administrator, 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 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 civil fine imposed by the Board in the amount not to exceed twenty-five dollars (\$25) per day, up to a maximum total civil fine of five hundred dollars (\$500). Any civil fine imposed by the Board under this section may be recovered by the Board in a civil action in the nature of a debt if the offender fails or refuses to pay the penalty within a prescribed time.
- (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.

SECTION 18. Nepotism Prohibited.

- (A) No officer or employee of the city or a city agency shall advocate, recommend or cause the:
- (1) employment;
 - (2) appointment;
 - (3) promotion;
 - (4) advancement of an immediate family member to an office or position of employment with the city or a city agency.
- (B) No officer or employee of the city or a city agency shall supervise or manage the work of an immediate family member.
- (C) No officer or employee shall participate in any action relating to the employment or discipline of an immediate family member, except that this prohibition shall not prevent an elected or appointed official from voting on or participating in the development of a budget which includes compensation for a family member, provided that that the immediate family member is included only as a member of a class of persons or a group, and the immediate family member benefits to no greater extent than any other similarly situated member of the class or group.
- (D) The prohibition in this section shall not apply to any relationship or situation that would violate the prohibition but which existed prior to January 1, 1995.

ENFORCEMENT

SECTION 19. Board of Ethics.

(A) Pursuant to the Memorandum of Agreement setting forth the BARREN RIVER REGIONAL BOARD OF ETHICS, all authority for the establishment of procedures for formation and maintenance of the BARREN RIVER BOARD OF ETHICS appropriate thereto are hereby delegated provided:

- (1) that the Board shall comply with all terms and conditions as set forth in the Act establishing a Code of Ethics for cities,
- (2) that any hearings or related procedures shall comply with the Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence,
- (3) that any regulations adopted by the Board of governing its procedures shall be consistent with the Kentucky Open Records Law and,
- (4) that the city shall bear its proportionate share of any costs for investigations, hearings, preparation of findings, and the issuance of any advisory opinions by the Board.
- (5) that no member of the REGIONAL BOARD OF ETHICS shall hold a position in any local government or be subject to the terms of this ordinance.

SECTION 20. Reprisals Against Persons Disclosing Violations Prohibited.

(A) No officer or employee of the city or any city agency shall subject to reprisal, or directly or indirectly use, or threaten to use, any official authority or influence in any manner whatsoever which tends to discourage, restrain, deter, prevent, interfere with, coerce, or discriminate against any person who in good faith reports, discloses, divulges, or otherwise brings to the attention of the BARREN RIVER REGIONAL BOARD OF ETHICS or any other agency or official of the City or the Commonwealth any facts or information relative to an actual or suspected violation of this ordinance.

(B) This section shall not be construed as:

- (1) Prohibiting disciplinary or punitive action if an officer or employee of the city or any city agency discloses information which he or she knows:
 - (a) To be false or which he or she discloses with reckless disregard for its truth or falsity.
 - (b) To be exempt from required disclosure under the provisions of the Kentucky Open Records Act, KRS 61.870 to 61.884.
 - (c) Is confidential under any other provision of law.

SECTION 21. Penalties.

- (A) Except when another penalty is specifically set forth in this ordinance, any officer or employee of the city or any city agency who is found by the BARREN RIVER BOARD OF ETHICS to have violated any provision of this ordinance shall be 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 (\$1000) which may be recovered by the city in a civil action if the nature of debt if the offender fails to pay the penalty within a prescribed period of time.
- (B) In addition to all other penalties which may be imposed under the 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 determined by the Board to have realized as a result of the violation. The amount of any forfeiture: may be recovered by the city on 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.
- (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 of removal, suspension, demotion, or other disciplinary action by the executive authority of the city or city agency, 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 laws of the Commonwealth.

SECTION 22. Severability.

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

SECTION 23. Conflicting Ordinances Repealed.

All other ordinances and parts of ordinances in conflict with this ordinance are hereby repealed to the extent of conflict. Specifically Ordinance 94-1 210.1 is repealed effective December 1, 2014.

SECTION 24. Effective Date.

This ordinance shall take full force and effect December 1, 2014 following publication as required by KRS 83A.060.

Given first reading on the 27th day of October, 2014.

Given second reading and duly enacted by the Commission of the city of Smiths Grove, Kentucky, on the 24th day of November, 2014.

APPROVED:


BERT E. HIGGINBOTHAM, MAYOR

ATTEST:


DEBORAH K. BREWER, CITY CLERK

See attached two documents:

- BY-LAWS BARREN RIVER REGIONAL ETHICS BOARD
- MEMORANDUM OF AGREEMENT between the Barren River Area Development District and the County and City Governments

BY-LAWS

BARREN RIVER REGIONAL ETHICS BOARD

ARTICLE I PURPOSE

SECTION 1. The Barren River Regional Ethics Board is established under the Memorandum of Agreement signed by local governments of the Barren River Area to implement and enforce the Agreement subject to the terms of KRS 83A and the terms of each of the ordinances adopted by the respective participating governments.

ARTICLE II MEMBERS

SECTION 1. Each of the participating local governments shall have the opportunity to nominate a person for the establishment of the Barren River Regional Ethics Board. The participating governments shall collectively ratify all appointments.

SECTION 2. Upon establishment of the original membership, and pursuant to the adoption of these By-laws, the Regional Ethics Board shall fill vacancies or add members provided:

- a. Each County in the Barren River Region shall have at least one and not more than two members;
- b. As nearly as practicable, the membership shall be equally representative of general citizens and citizens admitted to the bar;
- c. No member of the Regional Ethics Board shall be a member of any local government agency or institution subject to the terms of KRS 83A. or of any ordinances or Agreements devised under KRS 83A., nor shall any member of the Board be related as a spouse, parent, child, or sibling of any such government agency;
- d. Each member shall serve for so long as they are qualified under the above conditions and perform their duties as set forth under these By-laws.

e. A member may resign or may be removed for failure to perform duties by a vote of two-thirds of the membership at any meeting of the Regional Ethics Board provided for herein.

SECTION 3. Members of the Regional Ethics Board shall be included in the liability insurance policies and indemnity policies of the Barren River Area Development District.

ARTICLE III OFFICERS

SECTION 1. The Officers of the Board shall include a Chair, and a Vice Chair. Officers will be elected at the Annual Meeting and shall serve until replaced.

SECTION 2. The Chair shall prepare agendas for and preside at all meetings and act for the Board at all other times. The Chair shall receive complaints and oversee the assignment of members to respond as provided for in KRS 83A., the Memorandum of Agreement, the ordinances of the members and policies adopted by this Board.

SECTION 3. In the absence of the Chair, the Vice Chair shall carry out the duties of the Chair.

SECTION 4. The Records Administrator serving under terms of the Memorandum of Agreement shall assist the Regional Ethics Board and shall maintain necessary records and accounts. The Records Administrator shall report to the Chair, or the Board, on any failures of participants to make required filings, complaints received, amendments to ordinances, or determinations by the Courts, Attorney General, or actions of the General Assembly affecting the work of the Board. The Records Administrator shall provide timely notice of meetings and assist the Officers in the performance of their duties.

ARTICLE IV MEETINGS

SECTION 1. A meeting of the Regional Ethics Board shall be held in each quarter, with the meeting in the first quarter designated as the Annual Meeting.

SECTION 2. Meetings shall be scheduled by the Records Administrator as directed by the Chair, provided that a meeting may be scheduled on the written request of two other members representing two of the Counties.

SECTION 3. Meetings shall not be held less than seven (7) days from the date that notice is sent to each member by first class mail. Emergency meetings may be called by other means, provided that such meetings shall have a quorum and all present shall sign a waiver of notice by mail.

SECTION 4. A quorum exists if no less than six of the counties have a representative present and voting. If a meeting has been properly called and less than a quorum is present, the meeting may be recessed until a quorum is present.

SECTION 5. Unless otherwise required, a majority of the quorum may act on any matters before the Board.

ARTICLE V COMPENSATION

SECTION 1. No member shall receive pay from any source for service on the Regional Ethics Board, provided that members may receive compensation for necessary expenses and reimbursement at standard rates for mileage, tolls, and parking.

ARTICLE VI AMENDMENTS

SECTION 1. All amendments to the By-laws shall be approved by at least two-thirds of the members.

ARTICLE VII POLICIES

SECTION 1. To carry out the mission of the Regional Ethics Board, it shall be incumbent on each member to be aware of the procedures set forth in the **Memorandum of Agreement**, the ordinances of the respective member governments, and the findings of the Attorney General or the Kentucky Courts. It shall be the resp

onsibility of the Records Administrator to assist the Chair in making this information available.

SECTION 2. Complaints of violation of ordinances shall be submitted in writing, investigated where feasible by the Records Administrator or other staff designated, acknowledged as provided in the Memorandum of Agreement, and accepted for review.

SECTION 3. A preliminary or adjudicatory panel of no less than three nor more than five shall be assigned to each accepted complaint, provided:

- a. At least one member of the panel shall be an attorney, who shall conduct any hearing required. At least one member of the panel shall be a citizen member.
- b. The Records Administrator shall devise a system for the random selection and equitable rotation of panel members.
- c. Adjudicatory Panel members, to the extent feasible, shall conduct all hearings in the county in which the complaint originates.
- d. Adjudicatory Hearings conducted by the panel shall be subject to the Open Meetings/Records Law.
- e. No member of a preliminary hearing panel shall serve on the adjudicatory hearing panel.

SECTION 4. Preliminary Investigations

The Preliminary Panel shall conduct a preliminary hearing within thirty (30) days. The person against whom the complaint is made shall have an opportunity to be represented by counsel and to respond under oath. Proceedings for preliminary inquiry shall be kept confidential until a final determination is made by the Board provided;

- a. the Preliminary Panel may turn materials and evidence over to a prosecutorial office, or
- b. the Preliminary Panel may open proceedings to the public and release documents if the complainant or the alleged violator discloses the existence of the inquiry.

If the Preliminary Panel determines after reviewing the complaint or preliminary investigation that the complaint does not allege facts sufficient to constitute a violation, the Preliminary Panel shall immediately terminate the inquiry and notify in writing the complainant and the person alleged to have committed a violation. The Preliminary Panel may confidentially inform the alleged violator of potential violations and provide information to ensure future compliance with the law.

If the Preliminary Panel, during the course of the preliminary investigation, finds probable cause to believe that a violation has occurred, the Preliminary Panel shall notify the alleged violator of the finding, and the Board of Ethics may, upon majority vote, initiate an adjudicatory proceeding to determine whether there has been a violation.

SECTION 5. Adjudicatory Proceedings

The Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence shall apply to all adjudicatory hearings. All testimony in an adjudicatory proceeding shall be under oath. 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 and any other due process rights, privileges and responsibilities of witnesses shall be entitled to be represented by counsel.

Any person whose name is mentioned during adjudicatory proceedings of the Board of Ethics and who may be adversely affected thereby may appear personally before the Board on the person's own behalf, with or without attorney, to give a statement in opposition for incorporation into the record of proceeding.

All adjudicatory proceedings of the Board of Ethics carried out pursuant to the provisions of this section shall be public, unless the members vote to go into executive session in accordance with KRS 61.810.

Within thirty (30) days after the end of an adjudicatory proceeding, pursuant to the provisions of this section, the Board of Ethics shall meet in executive session for the purpose of reviewing the evidence before it. Within thirty (30) days after completion of deliberations, the Board shall publish a written report of its findings and conclusions.

The Board of Ethics, upon finding pursuant to an adjudicatory proceeding that there has been clear and convincing proof of a violation, may:

- a. Issue an order requiring the violator to cease and desist
the violation;
- b. Issue an order requiring the violator to file any report,

statement or other information as required by local code;

- c. In writing, publicly reprimand the violator for violations of the law and provide a copy of the reprimand to the affected local government chief executive.
- d. Issue an order requiring the violator to pay a civil penalty of not more than five hundred dollars (\$500).

The Board of Ethics may refer to the County Attorney or Commonwealth Attorney for prosecution evidence of criminal violations of a local ordinance.

Findings of fact or final determinations by the Board of Ethics that a violation of a local ordinance has been committed or any testimony related to the Board's findings of fact or final determinations, shall not be admissible in criminal proceedings in the courts of the Commonwealth of Kentucky. Evidence collected by the Board of Ethics may be used in a criminal proceeding if otherwise relevant.

Any person found by the Board of Ethics to have committed a violation of a local ordinance may appeal the action to the Circuit Court. The appeal shall be initiated within thirty (30) days after the date of the final action of the Board 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. The Court shall hear the appeal upon the record as certified by the Board.

SECTION 6. The Chair may prepare a response to written requests for an advisory opinion, may appoint a member to prepare a response, or may appoint a committee for this purpose. Such advisory opinions shall be considered the formal opinion of the Board and in effect until the Board can review, amend, or ratify at the next regular meeting.

SECTION 7. All procedural policies and requirements of the Memorandum of Agreement are hereby adopted as a part of these By-laws.

September 3, 1997

MEMORANDUM OF AGREEMENT

The Barren River Area Development District and the County and City Governments participating as Members do hereby enter into this Memorandum of Agreement to provide public records and enforcement systems for the implementation of ethics codes. Members shall mean the chief executive -mayor or county judge/ executive- representing those officials identified in Section 1 (1) of K. R. S. 65.003 and in ordinances adopted in compliance thereof.

I. PURPOSE

The purpose of this agreement is to help Members meet terms of House Bill 238, an Act relating to Codes of Ethics in cities or counties, in the most cost-effective way. This Agreement shall not supplant any requirement of a Code of Ethics or any ordinance adopted for a Member. This Agreement shall apply to Section 3 (b) and (d) of the Act.

II. DURATION OF AGREEMENT

The initial term of this agreement shall commence December 15, 1994, and shall run to December 14, 1995, and shall be automatically renewing annually for 12 months unless terminated by Barren River Area Development District or any Member(s). Any Member shall have the right to terminate this agreement at any time during the term or a renewal thereof by giving notice in writing to the other Members and Barren River Area Development District within 30 days of the close of the initial term or any subsequent term. The termination by any Member shall not affect continuation of the agreement with any and all other Members. For new Members entering after December 15, 1994, the Agreement shall conclude on December 14, 1995, but shall be renewable for 12 months unless terminated as provided above.

III. ADMINISTRATIVE FUNCTIONS

- A. The Barren River Area Development District shall maintain a system for receiving, cataloguing, and filing: the Code of Ethics and any official additions, changes, or additions, of each Member; the records of any complaints filed, proceedings, hearings held, opinions issued, or dispositions made; and the records of penalties, fines, or costs assessed, and the disposition of any fines collected, all of which shall be available for public inspection.
- B. The participating Members, Mayors and County Judge/Executives, shall establish a Regional Ethics Board for the purpose of reviewing complaints, making investigations,

taking evidence, compiling records, issuing opinions, and affixing allowable penalties when appropriate.

- C. The Board shall be composed of sufficient members so that no fewer than three shall review and act on any complaint and so that no member of the Board shall participate in a review of a complaint from the county of their residence.
- D. The Board shall affix allowable penalties when appropriate, provided that the collection and retention of fines shall be the duty of the Member(s).

IV. FUNDING

The Barren River Area Development District and the Members agree that costs of the services and the financial records shall be reviewed in September of each year, beginning in 1995, and an equitable means for repaying costs established.

V. PROVISIONS FOR FILING

1. Filing, Amending, and Maintaining Statements

Pursuant to this Agreement between the Members and the Barren River Area Development District, the initial statement of financial interests required by this section shall be filed with the Barren River Regional Board of Ethics, c/o Barren River Area Development District Records Administrator, no later than 3:00 p.m. March 1, 1995. All subsequent statements of financial interest shall be filed no later than 3 p.m. on March 1 each year, provided that:

(1) An officer or employee newly appointed to fill an office or position covered by the ordinance of the any Member shall file his or her initial statement no later than thirty (30) days after the date of appointment.

(2) A candidate for covered office shall file his or her initial statement no later than thirty (30) days after the date on which the person becomes a candidate for elected office, if required by Member's ordinance.

(B) The Barren River Regional Board of Ethics may grant a reasonable extension of time for filing a statement of financial interests for good cause shown.

(C) In the event there is a material change, as defined in the ordinance, in any information in a financial statement that has been filed with the Board, the officer or employee shall, no later than thirty (30) days after becoming aware of the material change, file an amended statement with the Board.

2. Form of the Statement of Financial Interests

(A) The statement of financial interests shall be filed on a form prescribed by the Barren River Regional Board of Ethics. The Board shall deliver to the Member a copy of the form for each officer and employee required to file the statement, no later than February 15 of each year. The failure to deliver the form shall not relieve the officer or employee of the obligation to file the statement.

3. Control and Maintenance of the Statements

(A) The Barren River Regional Board of Ethics shall be the "official custodian" of the statements of financial interests. The statements of financial interest shall be maintained by the Board, or the Records Administrator designated by the Board as "custodian," as public documents, available for public inspection immediately upon filing as provided in K. R. S. 61.870-61.884.

(B) A statement of financial interests shall be retained by the Board, or Records Administrator, for a period that is consistent with Kentucky Revised Statutes and the regulations of the Department of Libraries and Archives.

4. Noncompliance With Filing Requirement

(A) The Barren River Regional Board of Ethics, or the Records Administrator, 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 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) per day, up to a maximum total civil fine of five hundred dollars (\$500). Any civil fine imposed by the Board under this section may be recovered by the Board in a civil action in the nature of a debt if the offender fails or refuses to pay the penalty within a prescribed time.

(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.

VI. BOARD OF ETHICS

(A) Pursuant to this Memorandum of Agreement, the signers shall create a Barren River Regional Board of Ethics, which shall have all authority granted under the K. R. S. Ch. 65.003, under the ordinances of the Members, and all Power and Duties appropriate

thereto. The Barren River Regional Board of Ethics shall have enough members to provide for not less than three members, who are non-residents of the Member's jurisdiction, to conduct any investigation, hold any hearings, and prepare opinions or findings, provided;

(a) that the Board shall comply with all terms and conditions as set forth in the Act establishing a code of ethics for cities or counties,

(b) that any hearings or related procedures shall comply with the Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence,

(c) that any regulations adopted by the Board to govern its procedures shall be consistent with the Kentucky Open Records Law, and

(d) that the Member shall bear its proportionate share of any costs for investigations, hearings, preparation of findings, and the issuance of any advisory opinions by the Board as provided in IV above.

(f) that no member of the Regional Board of Ethics shall hold a position in any local government.

(g) that no member of the Regional Board of Ethics shall sit in review, hear testimony, or participate in any part of the proceedings arising from a complaint in the County of the members residence.

(B) The Barren River Regional Board of Ethics shall have the power and the duty to organize itself and adopt rules of procedure as are deemed necessary to receive complaints, to initiate investigations, to hold hearings, to make findings of fact and determinations within the terms set for in the Member ordinances, to issue orders in connection with investigations or hearings, to order testimony by deposition under oath, to refer any matter to the Member governing body, to issue advisory opinions, to refer matters to the Commonwealth's Attorney or other appropriate prosecutorial office, and to prevent any reprisal against any person filing a complaint.

(C) All complaints shall be submitted in writing, signed by the complainant, to the Barren River Regional Ethics Board. The Board shall acknowledge receipt of the complaint within ten (10) working days and shall forward a copy of the complaint to any affected officer or employee of the Member government. The Board shall conduct a preliminary hearing within thirty (30) days. The person against whom the complaint is made shall have an opportunity to be represented by counsel and to respond under oath. Proceedings for preliminary inquiry shall be kept confidential until a final determination is made by the Board provided;

(a) the Board may turn materials and evidence over to a prosecutorial office, or

(b) the Board may open proceedings to the public and release documents if the complainant or the alleged violator discloses the existence of the inquiry.

(D) The Board shall make a determination based on its preliminary inquiry whether the complaint is appropriate.

(E) If the Board of Ethics concludes the complaint is appropriate for review the Board may notify the subject and may initiate a hearing or may determine there are mitigating circumstances and issue a reprimand.

(F) Any person who knowingly files with the Board a false complaint shall be guilty of a Class A misdemeanor.

(G) If the Board determines a hearing is necessary, an order will be issued setting a date within thirty (30) days and a notice will be issued to the alleged violator within twenty four (24) hours of the time the order is issued.

(H) Prior to the hearing, the alleged violator shall have a reasonable opportunity to examine all materials. The Board shall inform the alleged violator of any exculpatory evidence.

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

(J) All hearings shall be public, unless the members go into executive session in accordance with KRS 61.810.

(K) Within thirty (30) days of the completion of the hearing, the Board shall issue a written report. If the Board concludes no violation has occurred written notice shall be given all parties. If the Board concludes there is clear and convincing proof of a violation of the ordinance, the Board may:

(a) Issue a cease and desist order.

(b) In writing, publicly reprimand the violator.

(c) In writing, recommend sanctions to the Member authority, which may include removal from office.

(d) Issue an order requiring a civil penalty of not more than \$1,000.

(e) Refer evidence of criminal violations for prosecution.

(L) Any person who is found guilty of a violation of any provision of this ordinance may appeal the Board's finding to the circuit court of the county within thirty (30) days after final action of the Board by filing a petition. The Board shall transmit all records to the clerk of the court. Except when the period of limitation is established by state law, an action for violation of this ordinance must be brought within one year of discovery.

(M) The Board of Ethics may render advisory opinions concerning matters under its jurisdiction. The Board may adopt regulations, consistent with Kentucky Open Records Law, under which it may issue confidential advisory opinions.

(N) The Board of Ethics may apply penalties in the amount set forth in the ordinance of the Member under which proceedings are made.