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No. 02 An Order Concerning Ethics Policies Applicable To, And Ethics Disclosures Required Of, Executive Branch Employees

Bill Lee

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SECRETARY OF STATE
PUBLICATIONS

STATE OF TENNESSEE
EXECUTIVE ORDER
BY THE GOVERNOR

No. 2

**AN ORDER CONCERNING ETHICS POLICIES APPLICABLE TO, AND ETHICS
DISCLOSURES REQUIRED OF, EXECUTIVE BRANCH EMPLOYEES**

WHEREAS, establishing, communicating, complying with, and enforcing a robust and comprehensive ethics policy within the Executive Branch of the State of Tennessee is essential to maintaining public trust in government and ensuring the proper performance of government; and

WHEREAS, disclosure is an indispensable element of an effective ethics policy; and

WHEREAS, this Administration is committed to simplifying and streamlining government processes, systems, and policies to a point understandable by Tennessee citizens;

WHEREAS, this Executive Order No. 2 underscores, expands, and enhances the commitment of this Administration to the highest standards of ethics and transparency by employees of the Executive Branch.

NOW THEREFORE, I, Bill Lee, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and the laws of Tennessee, do hereby direct and order that:

1. Except where otherwise noted, this Order applies to the following employees of the Executive Branch of the State of Tennessee: the Governor, members of the Governor's staff, members of the Governor's Cabinet, and all other Executive Branch employees.
2. Each employee shall avoid any action, whether or not specifically prohibited by statute, regulation, or this Order, which might result in or create the appearance of:
 - a. Using public office for private gain;
 - b. Giving preferential treatment to any person;
 - c. Impeding government efficiency or economy;
 - d. Losing complete independence or impartiality;

- e. Making a government decision outside of official channels; or
 - f. Affecting adversely the confidence of the public in the integrity of the government.
3. Each employee is expected to comply with the following ethical principles and policies governing financial interests, use of information, and use of government property:
- a. Financial interests.
 - i. No employee shall enter into or derive any benefit, directly or indirectly, from any contractual arrangement with the State or any of its agencies. In recognition of the fact that many spouses have separate careers, the normal employment compensation of a spouse whose regular, ongoing employer or business has a contractual arrangement with the State shall not be considered a “benefit” to the employee, provided the contract with the State was procured without any participation, assistance, or influence by the employee.
 - ii. No employee shall have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her government duties or responsibilities. “Indirect financial interest” in this case includes a substantial interest on the part of a member of the employee’s household. This subsection shall not apply to interests that have been placed into a “blind trust” arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests. This subsection also shall not apply to ownership of publicly traded stocks or bonds where such ownership constitutes less than two percent (2%) of the total outstanding amount of the stocks or bonds of the issuing entity. If, at the time the employee begins employment with the State or at any subsequent time during State employment, the employee possesses such direct or indirect financial interests, the employee shall divest such interest within a reasonable time.
 - b. Use of Information.
 - i. No employee shall directly or indirectly use, disclose, or allow the use of official information obtained through or in connection with the employee’s government employment and not available to the general public for the purpose of furthering the private interest of personal profit of any person, including the employee; or
 - ii. Engage in a financial transaction as a result of, or primarily relying upon, information obtained through the employee’s government employment.
 - c. Use of government property.

- i. No employee shall make use of the facilities, equipment, personnel, or supplies of the State or its agencies for private use or gain, except to the extent that the use is incidental or de minimis or is lawfully available to the general public.

4. Gifts.

- a. No Executive Branch employee shall solicit or accept, directly or indirectly, on behalf of himself or herself or any member of the employee's household, any gift, including but not limited to any gratuity, service, favor, food, beverage, refreshment, entertainment, lodging, transportation, loan, loan guarantee, or any other thing of monetary value, from any person or entity that: (i) has, or is seeking to obtain, contractual or other business or financial relations with the department or agency of the State of Tennessee in which the individual is employed; (ii) conducts operations or activities that are regulated by the department or agency of the State of Tennessee in which the employee is employed; or (iii) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.
- b. Exceptions. The prohibition on accepting gifts in paragraph 4 does not apply in the following circumstances:
 - i. A gift given by a member of the employee's immediate family or by an individual if the gift is given for a nonbusiness purpose and is motivated by a close personal friendship and not by the position of the employee. In determining whether a gift falls within this subdivision, the factors contained in Tenn. Comp. R. & Regs. 0580-01-05-.04(2) shall apply;
 - ii. Informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication;
 - iii. Sample merchandise, promotional items, and appreciation tokens, if they are routinely given to customers, suppliers, or potential customers or suppliers in the ordinary course of business;
 - iv. Unsolicited tokens or awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, wall memento, and similar items; provided that any such item shall not be in a form which can be readily converted to cash;
 - v. Food, refreshments, foodstuffs, entertainment, or beverages provided as part of a meal or other event, if the value of such items does not exceed, per occasion, the dollar amount provided in Tenn. Code Ann. § 3-6-305(b)(8), as updated via posting on the Tennessee Ethics Commission's website to account for changes in the average consumer price index; provided further, that the value of a gift made pursuant to this subsection may not be reduced below the monetary limit by

dividing the cost of the gift among two or more persons or entities identified in paragraph 4;

- vi. Food, refreshments, meals, foodstuffs, entertainment, beverages, or interstate travel expenses that are provided in connection with an event where the employee is attending a scheduled meeting of an established or recognized membership organization which holds regular meetings; and
 - vii. Loans from an established financial institution made in the ordinary course of business on usual and customary terms, so long as there are no guarantees or collateral provided by any person described in paragraph 4.
- c. There may be circumstances where refusal or reimbursement of a gift such as a lunch or dinner may be awkward and contrary to the larger interests of the State. In such circumstances, the employee is to use the employee's best judgment and disclose the gift, including a description, estimated value, the person or entity providing the gift, and any explanation necessary within fourteen (14) days to the Chief Ethics Officer on the form titled "Gift Prohibition Exception Disclosure" provided by the Department of Finance and Administration for that purpose.

5. Disclosures.

- a. The Commissioner of Finance and Administration shall prepare forms that should be utilized to report the information described in this Order and shall make those forms available to each individual on or before January 1 of each year. Such forms and statements can be located on the Commissioner of Finance and Administration's website and shall be completed and filed by the respective employees as follows:
 - i. The Governor and Governor's Cabinet and Cabinet Level Staff.
 - 1. Pursuant to Tenn. Code Ann. § 2-10-115 and §§ 8-50-501 and -502 the Governor and the Governor's Cabinet and Cabinet level staff shall file annually the "Statement of Disclosure of Interest Form" with the Tennessee Ethics Commission and the Counsel to the Governor on or before April 15th of each year.
 - a. The disclosure shall exceed the statutory requirements of Tenn. Code Ann. §§ 8-50-501 and -502 in one respect. Subsequent to appointment, each covered employee shall file annually the complete form required upon appointment (as set forth in Tenn. Code Ann. § 8-50-501), and may not file a letter simply indicating any, or no, changes from the initial filing as is currently authorized by Tenn. Code Ann. § 8-50-504.

2. The Governor and the Governor's Cabinet and Cabinet level staff shall file annually the "Ethics Policy Compliance Certification and Conflict of Interest Statement" with the Chief Ethics Officer on or before April 15th of each year.
 - ii. All other employees listed on Attachment A of this Order.
 1. All other employees listed on Attachment A of this Order shall file annually the "Statement of Disclosure of Interest Form" and the "Conflict of Interest and Ethics Policy Receipt Statement" with the Chief Ethics Officer on or before April 15th of each year.
6. I appoint the Counsel to the Governor to serve as the Chief Ethics Officer for the Executive Branch charged with administering the provisions of this Order and maintaining all records related to the ethics policy.
7. The Chief Ethics Officer shall convene a meeting of the Chief of Staff, the Commissioner of Finance and Administration, and the Commissioner of Human Resources to take any action necessary or convenient to determine or enforce the ethics policy and address any request for exemptions.
8. When an employee is in doubt as to the proper interpretation of this Order, the employee is expected to seek the advice of the Chief Ethics Officer.
9. The Chief Ethics Officer shall make the disclosures and statements required by this Order available for inspection by the public during normal working hours.
10. This Executive Order is intended only to improve the internal management of the Executive Branch of the State of Tennessee and does not create any right to administrative or judicial review, or any other right or benefit, substantive or procedural, enforceable at law or equity by a party against the State of Tennessee, its agencies or instrumentalities, its officers or employees, or any other person.
11. This Executive Order No. 2 supersedes and rescinds Governor Haslam's Executive Order No. 20, dated August 31, 2012, and all other directives and memoranda concerning ethics policies applicable to the Executive Branch, and all previous executive orders, the terms of which are inconsistent with the terms of this Executive Order No.2, are hereby repealed.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 24th day of January, 2019.

Bruce Lee
GOVERNOR

ATTEST:

Lee Knight
SECRETARY OF STATE



**ATTACHMENT A TO EXECUTIVE ORDER 2
POSITIONS COVERED**

Office of the Governor

Governor
Deputy to the Governor
Chief of Staff
Chief Operating Officer
Counsel to the Governor
Senior Advisor to the Governor
Special Assistant to the Governor
Deputy Counsel to the Governor
Director of External Affairs
Legislative Director
All legislative liaisons
Communications Director
Policy Director

All Executive Branch Departments, Except for Department of Military

Commissioner
All deputy commissioners
All assistant commissioners
All chiefs of staff
All general counsels
All chief operating officers
All chief financial officers and budget directors
All chief medical officers
All senior advisors to the commissioner
All special assistants to the commissioner
All legislative directors or liaisons or the equivalent thereof

Department of Military

Adjutant General
All assistant adjutant generals
Director of TEMA
General Counsel
All legislative directors or liaisons or the equivalent thereof

Division of TennCare

Deputy Commissioner/Director
Deputy Directors
All assistant commissioners
Chief of Staff
Chief Medical Officer
General Counsel
Legislative director or legislative liaisons or the equivalent thereof