

103 KAR 5:150. Procedures for the removal of a property valuation administrator from office.

RELATES TO: KRS 132.370

STATUTORY AUTHORITY: KRS 61:810, 131.030, 131.130, 132.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 132.370 provides that a property valuation administrator may be removed from office by final order of the Secretary of Revenue for willful disobedience of any just or legal order of the cabinet, or for misfeasance or malfeasance in office or willful neglect in the discharge of his official duties, including but not limited to intentional underassessment or overassessment of properties and chronic underassessment of properties. This administrative regulation implements KRS 132.370 and establishes the time limits and procedures to be followed by all parties in preremoval conferences and postremoval hearings.

Section 1. Definitions. (1) "Cabinet" means the Revenue Cabinet.

(2) "PVA" means a property valuation administrator.

(3) "Secretary" means the Secretary of the Revenue Cabinet.

Section 2. Notice of Intent to Remove. If the secretary has determined that a PVA should be removed from office pursuant to KRS 132.370, the PVA shall be notified in writing of the secretary's intent to remove him. The notice shall state the specific reasons for removal including the specific activity, act or omission on which the intent to remove is based. The notice shall advise the PVA of the PVA's right to a preremoval conference and a postremoval hearing and shall explain the time limits and procedures to be followed in that conference and hearing.

Section 3. Preremoval Conference. (1) No later than five (5) working days after receipt of the notice of intent to remove, excluding the day he or she receives such notice, the PVA may request in writing a conference with the secretary or his or her designee to answer the charges. The conference shall be scheduled within six (6) working days after receipt of the PVA's request for a preremoval conference, excluding the day the PVA's request is received. Failure of a PVA to request a preremoval conference shall not be deemed a waiver of the PVA's right to contest removal from office in the postremoval hearing. If a preremoval conference is not timely requested, the cabinet shall notify the PVA in writing of the effective date of removal, the specific reason for removal, and advise the PVA of the opportunity for a postremoval evidentiary hearing in accordance with subsection (3) of this section.

(2) The preremoval conference shall be held for the purpose of allowing the PVA to appear, with or without counsel, and to reply to the charges.

(3) No later than five (5) working days after the PVA appears before the secretary or his or her designee, excluding the day of the appearance, the secretary or his or her designee shall decide whether there are reasonable grounds to believe the charges against the PVA are true and that removal is appropriate. If the secretary or his or her designee determines the PVA shall be removed, the PVA shall be notified in writing of the effective date of removal and the specific reason for the removal, including the specific activity, act or omission upon which the removal is based. This notification shall also advise the PVA that no later than ten (10) days after receipt of the notice of removal, excluding the day he or she receives such notice, the PVA may request a postremoval evidentiary hearing before the cabinet.

(4) The secretary or his or her designee shall schedule a postremoval hearing to be held within thirty (30) working days after receipt of the PVA's request for a postremoval hearing. A hearing may be continued or rescheduled by agreement of the parties or upon motion of a party supported by a showing of good cause.

(5) If the PVA fails to timely notify the cabinet in writing of his or her intention to appear and answer the charges at the postremoval evidentiary hearing, he or she shall be deemed to have no objection to his or her removal or the charges upon which the removal based. The secretary may, without conducting further proceedings or making findings of fact or conclusions of law, issue a decision making the removal final.

Section 4. Postremoval Hearing. (1) Hearing officer. Postremoval hearings shall be conducted before one (1) or more hearing officers to be appointed by the secretary. The hearing officers shall be full-time employees of the cabinet who have had no involvement in the investigation of or decision to bring the charges resulting in the PVA's removal. If more than one (1) hearing officer is appointed, the secretary shall designate one (1) of the hearing officers to preside over the hearing.

(2) Power and duties of the presiding hearing officer. The presiding hearing officer shall have the authority to control the procedure of a hearing, to admit or exclude testimony or other evidence, and to rule upon all motions and objections. The presiding hearing officer shall fully inquire into all the facts at issue and shall obtain a full and complete record of all facts necessary for a fair determination of the issues. The presiding hearing officer may call and examine witnesses, direct the production of papers or documents, and admit this proof into the record of the proceedings.

(3) Procedure.

(a) A case in support of the charges against the PVA shall be presented before the hearing officer by a cabinet attorney or cabinet employee. The cabinet may call and examine witnesses. The PVA or his or her counsel may cross-examine cabinet witnesses and may present evidence and witnesses on his or her behalf. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded and the rules of privilege shall be given effect.

(b) All testimony shall be given under oath or affirmation and a record of the proceedings shall be made and kept.

(c) Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, may be stated orally.

(d) The presiding hearing officer may exclude from the hearing room or from further participation in the proceeding any person who engages in conduct before the hearing officer that is contrary to law, disruptive or otherwise improper.

(e) A postremoval hearing shall be private unless the accused PVA requests a public hearing.

(f) The record of the proceedings before the hearing officer shall consist of the transcript of the testimony taken at the hearing, the exhibits offered in evidence, any written applications, orders and motions made by the parties, any interlocutory orders or rulings made by the hearing officer, and the hearing officer's recommended findings of fact, conclusions of law.

(g) Within thirty (30) days of the completion of the hearing, the hearing officer shall render written recommended findings of fact, conclusions of law and an order to be served upon the parties and the secretary.

(h) The secretary may accept or reject the recommended decision of the hearing officer and shall notify the PVA in writing of this decision. This decision of the secretary shall constitute the final decision of the secretary and shall be made part of the record of the proceedings conducted by the hearing officer. (19 Ky.R. 2350; Am. 20 Ky.R. 52; 297; eff. 6-24-1993.)