

June 23, 2000

RE: May employee accept travel expense reimbursement when interviewing for future employment?

DECISION: Yes, within certain limitations.

The Commission issues this opinion upon its own motion. Questions have been asked of the Commission staff regarding the propriety of employees accepting travel expense reimbursement when interviewing for future employment outside of state government. Specifically, the Commission wishes to address whether an employee may accept travel expense reimbursement from a person or business doing business with, regulated by, or seeking to influence the actions of the state agency for which the employee works.

Effective July 14, 2000, regarding the acceptance of gifts, KRS 11A. 045(1) will provide:

(1) No public servant, his spouse, or dependent child knowingly shall accept any gifts or gratuities, including travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five dollars (\$25) in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety. (Emphasis added)

The Commission believes that the law above seeks to prohibit any perceived or actual conflicts of interest for state employees. Thus, employees are generally prohibited from accepting gifts or gratuities from potential vendors, or from businesses that are subject to regulation by the state agency for which an employee works. However, the Commission also realizes that there are situations that are prohibited by KRS 11A.045(1), which in reality do not

create any conflict or appearance of a conflict of interest, but which unjustly penalize an employee. In such a case, the Commission may exercise the option authorized above by allowing an employee to accept a gift as provided in 11A.045(1).

Regarding the questions above, the Commission believes that if an employee is seeking employment with a person or business that is a vendor, potential vendor, or subject to regulation by the employee's agency, he should abstain, as part of his official duty, from all matters regarding that entity as concluded in Advisory Opinion 00-6 (a copy of which is enclosed). Such intention to abstain should be documented in writing pursuant to KRS 11A.020(3) stated below:

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

If an employee documents in writing his intention to abstain from matters involving a person or business with whom or which he is seeking employment, if no employees under his supervision have any involvement regarding the entity, and if no active matters of regulation of the person or business are before the agency, then the Commission believes the employee may accept travel expense reimbursement offered by a person or business that wishes to pay for the employee to travel to an employment interview.

Conversely, if those under his supervision have involvement with the person or business with whom or which he is seeking employment, or if the agency is involved in an active matter of regulation involving the person or business, then the Commission believes a conflict of interest will exist and the employee should not accept such travel expense reimbursement.

If it is impossible for the employee to remove himself as a part of his official duty from matters involving a person or business with whom or which he is seeking employment, the employee should not seek future employment with the person or business.

Sincerely,

Executive Branch Ethics Commission

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By Chair: Bertie Oldham Salyer, M.A., A.M.E.

Enclosure: Advisory Opinion 00-6