

00-36
August 18, 2000

RE: May the Division of Forestry accept grant for a hardwood management project?

DECISION: Yes.

This opinion is in response to your June 19, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 18, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You recently learned that the Division of Forestry within the Natural Resources and Environmental Protection Cabinet qualified for and accepted a \$10,500 grant from the Hardwood Forestry Fund ("HFF"), a private, nonprofit, international tree-planting foundation dedicated to promoting hardwood timber growth, management, education and environmental sound uses of forest resources. The grant money will be used to fund a hardwood management project in Henderson County. Contributors to the HFF include forest products industries, individual wood workers, and private citizens. You do not believe the grant is a gift or gratuity because the Division of Forestry must submit documentation of sustainable management that enhances habitat for wildlife, conserves soil and water, and creates a timber resource. Additionally, the Division of Forestry does not regulate any of the persons or businesses that contribute to the HFF. Although you do not believe that a state agency is prohibited from receiving funding from a nonprofit organization to be used to further mutual goals of hardwood management, you ask for an opinion on this matter.

KRS 11A.045(1) provides:

(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

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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.

The Commission opined in several advisory opinions (copies of which are enclosed) that state agencies should not accept gratuities from persons or entities that do business with, are regulated by, lobby, or are involved in litigation against the state agency, or from entities which have as their primary purpose the representation of such persons or entities. Even if a grant is from a nonprofit organization to be used to further the state agency's goals, it should not be accepted if the state agency regulates the nonprofit organization or its members.

However, it does not appear from the information that you have provided that the HFF is regulated by, doing business with, lobbying, or involved in litigation against the Natural Resources and Environmental Protection Cabinet. Additionally, it does not appear that HFF has as its primary purpose the representation of persons or entities regulated by or doing business with the Natural Resources and Environmental Protection Cabinet. Thus, the Commission believes that the Division of Forestry is not prohibited from accepting the grant from the HFF.

Sincerely,

Executive Branch Ethics Commission

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

Enclosures