

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 00-52

November 3, 2000

RE: May employees accept travel expense reimbursement for service on board or committees?

DECISION: No.

This opinion is in response to your August 14, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 22 and November 3, 2000, meetings of the Commission and the following opinion is issued.

You state the relevant facts as follows. The National Certification Program for Construction Code Inspectors ("NCPCCI"), a program designed to provide a nationally recognized basis for determining the technical code knowledge of construction code enforcement personnel and comprised of states, territories, and nationally recognized construction code-related organizations, is responsible for the content of the examination that building code inspectors must pass in order to be certified. According to its bylaws, the NCPCCI is a joint effort between its members and Experior, a for-profit corporation. Any state may be a voting member of NCPCCI if it has the legal authority to carry on voluntary or mandatory certification or licensing programs and it recognizes at least one examination program of NCPCCI for such requirements or if it has entered into a contract with Experior for the purpose of using the NCPCCI as a basis for the organization's certification or licensing program. It appears that the Department of Housing, Buildings and Construction (the "Department") has entered into a contract with Experior for the purpose of using the NCPCCI for licensing inspectors, and thus Kentucky is a voting member of the NCPCCI. Each voting member appoints an individual to represent the member on the Board of Governors (the "Board") of the NCPCCI.

In addition, several employees of the Department serve, as part of their official duties, on test development committees of the NCPCCI. The Department has a need for staff members to

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serve on test development committees to ensure that tests are technically correct for inspectors enrolled in the certification program. Experior Assessments (“Experior”) also has a need to have technically qualified persons on the committees to ensure the exam modules are technically up-to-date. Employees who serve on the committees are not selected by Experior, but are selected by the Board of NCPCCI.

According to the bylaws of the NCPCCI, a “travel assistance fund” must be established by Experior to fund the participation of members of the Board and of test development committees in their respective activities for NCPCCI. Experior is required to allocate to the travel assistance fund a fixed amount of each test registration fee. You ask whether employees of the Department who serve on the Board or on test development committees for the NCPCCI may accept reimbursement from Experior for the travel expenses that they incur when they attend Board or committee meetings.

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 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.

It appears to the Commission that the NCPCCI is not an independent non-profit agency set up to serve state members alone, but it appears to serve the interests of a single vendor. The Commission believes that the NCPCCI is not independent of Experior, a for-profit vendor of the Department.

Although the bylaws of the NCPCCI require Experior to allocate some of the test registration fees for travel expense reimbursement of Board and committee members, because

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such an agreement is not part of the Department's open bid for competition, the Commission does not believe an exception may be allowed. Thus, the Commission believes that the employees of the Department should not accept reimbursement for the travel expenses they incur while serving on the Board or test development committees for the NCPCCI from Experior.

If the Department believes it is worthwhile and in the public interest for employees to serve on the Board or on test development committees of the NCPCCI, then the Department should pay their expenses.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Bertie Oldham Salyer, M.A., A.M.E.

Enclosure: Advisory Opinion 94-39