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BOYCE A. CROCKER

ADVISORY OPINION 01-20

June 22, 2001

RE: May a company pay for transportation, lodging and certain entertainment expenses in order that an employee may be recognized by the company and attend a meeting at their out-of-state offices for the work he does with “flex” accounts?

DECISION: No.

This opinion is in response to your May 22, 2001 request for an advisory opinion from the Executive Branch Ethics Commission (the “Commission”). This matter was reviewed by the Commission at the June 22, 2001 meeting of the Commission and the following opinion is issued.

You are employed by the Department of Education (the “Department”) with one of your duties being the oversight and review of local school districts’ “flex” accounts. The Company is a vendor to certain local school districts for “flex” account services. The Department is not involved in the procurement process that local school districts employ to obtain “flex” account services, but does have oversight of these matters.

KRS 11A.045(1), that section of the Executive Branch Code of Ethics (the “Code”) that addresses acceptance of gifts by public servants, provides as follows:

- (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.

Though the Department is not involved in procurement of those vendors that provide “flex” account services to local school districts, such as the Company, the Department is clearly involved in oversight and regulation of the school districts and vendors relative to administration of those “flex” accounts. At the very least, an appearance of impropriety would be created should the Company provide free transportation, lodging and entertainment for a Department official to be “recognized” by the Company at its out of state offices. The appearance would be, at least to other vendors and local school districts, is that the Company is the “favored” vendor for these services, and would imply that the Department endorses selection of the Company for “flex” account services. Thus, the Company may not pay the employee’s expenses to be recognized and attend a meeting at their out of state offices. However, should the Department feel this recognition and the meeting would be of value to the Department, the Department may pay for allowable expenses to visit the Company’s out of state offices.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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