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BOYCE A. CROCKER

ADVISORY OPINION 01-21

June 22, 2001

RE: May an employee place candy machines in the workplace in order to raise money for charity?

DECISION: No.

This opinion is in response to your June 4, 2001, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 22, 2001 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are an employee of the Department of Corrections (the "Department") with your workplace at the Kentucky State Reformatory (the "Reformatory"). You propose to lease bulk candy machines and place them in LaGrange area Department offices. By separate agreement between you and the Crusade for Children (the "Crusade"), a Louisville area charity, the Crusade would realize \$7,200.00 annually from revenues generated by the machines. Expenses to maintain the machines with candy and to service the machines would also be funded by revenues generated from the sale of candy. Any excess funds from revenues generated by sale of candy from the machines, after the \$7,200.00 goes to the Crusade and operating expenses are paid, would be considered income to the operator (you). You state that you will not hold a contract with the Department.

KRS 11A.040 states in pertinent part that:

(4) A public servant shall not knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340.

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The fact that there will be no “contract” between you and the Department is not controlling in this situation. In order for these machines to be placed in the various Department workplaces in the LaGrange area, some sort of agreement would need to be reached between the employee and the Department, whether verbal or written, to allow for placement of the machines in secure areas. Such an agreement would violate the above section of the Code because the employee will realize a benefit from placement of the machines in Department workplaces.

In addition, this proposed arrangement may violate KRS 11A.020(1)(c) and (d) which state:

(1) No public servant, by himself or through others, shall knowingly:

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant’s family...

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

While placement of the machines would doubtless generate revenue for the Crusade, which is a good charitable endeavor, it would also generate profit for the employee. It is unlikely a private citizen would be afforded the opportunity to place candy machines inside Department offices and buildings in the LaGrange area with the knowledge that the machines would not only generate money for charity but also earn a profit for the private citizen. As such, this proposal has the appearance of the employee using the official position as a Department employee to gain an advantage or financial gain.

Finally, placement of the candy machines, which would become a permanent or long-term fixture in Department offices in LaGrange, may give the appearance that the Department is endorsing the works of the Crusade over other charities. While not specifically addressed, the specific appearance of an endorsement by a governmental agency of one company or product over another has been disallowed by the Commission. See AO 00-18.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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