

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 02-16**

March 22, 2002

RE: May a state employee deliver a presentation at the Document Management session of the Kentucky Forum?

DECISION: Yes, if such a presentation will not give the appearance of endorsing a product.

This opinion is in response to your February 26, 2002, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 22, 2002, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Transportation Cabinet (the "Cabinet"), Office of Policy and Budget. You recently were contacted by a software company representative requesting an employee within your office to speak at a government technology executive leadership forum, entitled "Kentucky Forum: Government Service in a Changed World ("Kentucky Forum")." The Kentucky Forum is to be held in Lexington, Kentucky, on April 23-24, is coordinated by *Government Technology* magazine and it appears to be sponsored by various software companies. The Kentucky Forum is geared toward state and local government technology employees and elected officials. The session at which the employee would speak is the Document Management session and will be managed by an employee of a software company that is a Cabinet vendor for the electronic forms program the Cabinet uses. Your employee would discuss your agency's experience using a software program for electronic forms, and is being asked to do this by a representative of the company that supplied the Cabinet with that software. It is your belief that the presentation would be a testimony as how the Cabinet saw the need for electronic forms management, not an endorsement of the software company or its product. You ask whether the employee may do this *vis-à-vis* the Executive Branch Code of Ethics (the "Code").

KRS 11A.005(1)(a) and (d) provide:

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

(a) A public servant be independent and impartial;

...

(d) The public has confidence in the integrity of its government and public servants.

Additionally, please find enclosed Advisory Opinion 01-2 for your review. As provided in that opinion, the Commission has stated that it believes state agencies must reflect high standards of ethical behavior, which behavior includes not endorsing or promoting a specific company or product.

It appears that the Kentucky Forum is geared towards government employees and searching for solutions to make government technology better serve the public and enable agencies to ensure they are being fully productive. The Commission believes this to be a commendable goal for the Kentucky Forum, but does caution that a state employee addressing other governmental technology employees and elected officials about a software program might appear to be endorsing that program.

The Commission believes that if such a presentation will be construed by the attendees to be an endorsement of the product being discussed, then the employee should not make the presentation. Although the Commission believes that the employee is not prohibited from informally discussing the Cabinet's experience in dealing with document management issues, it appears to the Commission that a formal presentation may give the appearance of a public endorsement of the product and the company sponsoring the presentation.

If it is possible for the employee to discuss the Cabinet's experience in dealing with document management issues, and what advantages or problems the Cabinet has experienced in using document management software to achieve those important ends, during the presentation without reference to the specific product or company used, and the sponsor is not recognized during the session or listed on the program with the speaker, then it may be permissible for the employee to make the presentation. It is the Cabinet's responsibility to ensure that this presentation is not an endorsement and, in fact, does not give the appearance of an endorsement and that all reasonable steps have been made to ensure that is the case.

Enclosures: Advisory Opinion 01-2