

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-39

September 11, 2002

- RE: 1) May employees solicit manufacturers of computer equipment for demonstration equipment to be used at professional organization's annual conference?
- 2) May a state agency purchase discounted computer equipment offered as a result of being used as demonstration equipment?

- DECISION: 1) No.
- 2) Yes.

This opinion is in response to your June 25, 2002, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 11, 2002, meeting of the Commission and the following opinion is issued.

You state the following relevant facts. You are employed as Information Technology Manager by the Department of Libraries and Archives (the "Department"). Additionally, you contract independently of the Department to provide administrative and managerial support services for the Southeastern Association of Colleges and Employers (the "SACE"). You use no state resources in regards to this activity. Each year SACE holds a conference, and for the past two years you have obtained the loan of demo equipment from computer manufacturers for the conference. At the conclusion of the conference, some of this loaned demo equipment has been purchased by the Department at significant loaner/demo discounts. The Department regularly purchases computer equipment made by some of the manufacturers you have dealt with for the SACE conferences, not directly from these manufacturers, but through one of several resellers via state price contract. You ask if this arrangement is allowable and in compliance with the provisions of the Executive Branch Code of Ethics (the "Code").

KRS 11A.005(1)(a) provides:

- (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:

ADVISORY OPINION 02-39

September 11, 2002

Page Two

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;

Also, KRS 11A.020(1)(d) provides:

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

...

- (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.

In Advisory Opinion 02-28 (a copy of which is enclosed), the Commission advised that the Commissioner of Agriculture should not solicit businesses on behalf of a professional organization that the Department of Agriculture directly or indirectly regulates or with which it does business. Similarly, the Commission believes that you are prohibited from soliciting computer manufacturers to obtain the loan of demonstration equipment for the SACE conference. Although the manufacturers of this equipment do not sell computers and other equipment directly to the Department, but rather through resellers, via price contract, the manufacturers are nonetheless seeking business from the Department via the resellers, and the Department is involved in decisions as to which manufacturers' products to purchase. Thus, the Commission believes that your involvement in soliciting the manufacturers for the use of demonstration equipment for the SACE conference would present a conflict with your official duties for the Department, even if you are representing SACE and not the Department. You should not continue your solicitation efforts of computer manufacturers on behalf of the SACE conference.

The other part of your question is whether the Department may purchase the demo/loaner equipment that is displayed at the SACE conference at a discounted price. Based on Advisory Opinions 93-88 and 01-1 (copies of which are enclosed), which address travel and computer

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-39

September 11, 2002

Page Three

discounts for state employees, the Commission believes the Department, also, may purchase the loaner/demo equipment provided by manufacturers for the SACE conference at the loaner/demo discount, provided the loaner/demo discount is available to any customer that wishes to purchase a loaner/demo model and provided the purchase complies with the model procurement code in KRS Chapter 45A.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY VICE CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 02-28
 Advisory Opinion 93-88
 Advisory Opinion 01-1