

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-48

November 22, 2002

RE: May the Office of Women's Physical and Mental Health accept gifts, including in-kind contributions, from corporations or other entities regulated directly or indirectly by the Cabinet for Health Services?

DECISION: No.

This opinion is in response to your September 12, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the November 22, 2002, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Office of Women's Physical and Mental Health (the "Office"), within the Cabinet for Health Services (the "Cabinet"), is authorized in KRS 194A.095(2) to "accept gifts, grants, and bequests in support of its mission and duties." The Cabinet administers funds received through appropriate trust and agency accounts. The Office is tasked with the development of a Women's Health Resource Center within the Cabinet to focus on targeted preventive health care and comprehensive health education.

The Cabinet has broad regulatory responsibilities in the area of health care services and oversees compliance of licensed health care facilities. The Cabinet also is responsible, through its Medicaid program, for provider agreements with licensed health care professionals and facilities, and it administers the outpatient drug prior authorization program established by the Pharmacy and Therapeutics ("P&T") Committee.

In recognition of the Cabinet's regulatory responsibility, you seek an opinion on the ethical limitations of the ability of the Office to accept and solicit gifts or grants in support of its mission and duties.

- May the Office accept an unsolicited gift from an entity that is either the operator of a state-licensed health care facility or provider, a Medicaid provider, or a pharmaceutical company whose products are subject to review by the P&T committee?

ADVISORY OPINION 02-48

November 22, 2002

Page Two

- May the Office solicit a contribution or apply for a grant to support its mission and duties when the funds that may be received from those solicitations are to be administered by the Cabinet for the benefit of the Office?

- May the Office accept in-kind contributions in support of its programs?

You believe that it is important to avoid a clear conflict of interest as well as to avoid the creation of a semblance of impropriety in the manner in which funds are solicited.

KRS 11A.005(1)(d) states that the “proper operation of democratic government requires that:

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

Additionally, 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.

Several previously issued advisory opinions (see AO 96-42, enclosed) establish the Commission’s long-standing consistent interpretation as precedent that state agencies may not solicit or accept gifts, including in-kind contributions, from persons or businesses that do

Executive Branch Ethics Commission

ADVISORY OPINION 02-48

November 22, 2002

Page Three

business with, are regulated by, receive grants from, or are seeking to influence the actions of the state agency. Thus, although statutory authority allows for the Office to accept gifts and in-kind contributions, the Commission believes the Office must do so within the parameters of the interpretation of the ethics law provided above.

The Office may solicit and accept gifts and grants from entities that are not regulated by or doing business with the Cabinet, but should not solicit or accept gifts from those entities which are regulated by or doing business with the Cabinet. Acceptance of such gifts may give the appearance that the Cabinet would favor such an entity in its regulation of, or business relations with, that entity.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.

Enclosures: Advisory Opinion 96-42