

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-22

May 29, 2003

RE: May vocational rehabilitation counselors accept a tuition-free semester course from a state university?

DECISION: Yes.

This opinion is in response to your April 25, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 29, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Department for the Blind and the Department of Vocational Rehabilitation (the "Departments"), both agencies administratively organized within the Cabinet for Workforce Development (the "Cabinet"), employ vocational rehabilitation counselors to provide statutorily mandated comprehensive vocational rehabilitation services. In addition to these job duties, vocational rehabilitation counselors may be asked to supervise internships for graduate students enrolled in the Graduate Program in Rehabilitation Counseling in the Department of Special Education and Rehabilitation Counseling, College of Education at the University of Kentucky ("University"). The Departments have determined it is in their best interests to participate in this internship program in order to ensure continuous development of qualified counselors for individuals with disabilities.

The University, in appreciation of the long hours required of state employees involved in the internship program, would like to allow the participating vocational rehabilitation counselors to attend a one semester course of their choice tuition-free. The Departments would like for their employees to be able to avail themselves of this opportunity, contending that there would be no damage to public confidence in the government, nor would there be an actual conflict of interest in the employees' acceptance of the tuition-free one semester course at the University.

The Department for the Blind does have a business relationship with the University, in that the University conducts a client satisfaction survey, as well as other services, for the Department for the Blind.

ADVISORY OPINION 03-22

May 29, 2003

Page Two

KRS 11A.040(5) states:

(5) A public servant shall not knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

KRS 11A.045(1) states:

(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.

In looking at this issue, the Commission must consider the two separate provisions of the law cited above.

First, according to the above statutes, employees may not accept compensation, other than their salary, for performance of job duties. You say in your request that, "The agencies have elected participation in the graduate program to ensure the continuous development of qualified counselors for individuals with disabilities." Thus, it is clear that the vocational rehabilitation counselors supervise the internship students as part of their official job duties.

In this case, assuming none of the vocational rehabilitation counselors are involved with the decisions for the Departments to participate in the internship program, there does not appear to be a conflict of interest for the individual vocational rehabilitation counselors. Likewise, as

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-22

May 29, 2003

Page Three

state government has in place a tuition reimbursement program for qualified employees, the exception being requested here does not appear out of line with the state's policy in general which obviously includes tuition reimbursement as compensation provided by law to employees and which clearly has a tangible benefit to both the state agencies concerned and the public interest at large.

Secondly, if the Departments are doing business with the University, then employees of the Departments are prohibited based on KRS 11A.045(1) from accepting a gift, such as free tuition, from the University, if the value is greater than \$25. However, the law allows the Commission to grant an exception to this statutory provision when an appearance of impropriety will not be created. As stated above, the Commission believes that in this case it does not appear that the vocational rehabilitation counselors are involved in matters that directly affect the University, and thus acceptance by the counselors of a tuition free course would not give any appearance of impropriety.

Therefore, based on both issues detailed above, the Commission gives its approval to vocational rehabilitation counselors involved in the internship program, who are not involved as part of their official duties in matters that directly affect the University, to accept a tuition-free one semester course from the University in addition to their state compensation, and the Commission issues an exception to KRS 11A.045(1) in this matter.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.