

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-27

July 31, 2003

- RE:
- (1) May the Revenue Cabinet solicit donations for the 2003 KECC Campaign from corporations regulated by the Cabinet?
 - (2) May the Revenue Cabinet give public acknowledgement to corporate donors to the KECC campaign?
 - (3) May private book vendor set up space on state property if a percentage of the revenues go to KECC?

- DECISION:
- (1) Yes.
 - (2) No.
 - (3) Yes, but only if all funds raised go to benefit KECC.

This opinion is issued in response to your June 30, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 31, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Secretary of the Revenue Cabinet (the "Cabinet") is the chairperson for the Kentucky Employees Charitable Campaign (the "KECC") for 2003. You are aware that a recent change to KRS 11A, the Executive Branch Code of Ethics (the "Code"), appears to allow solicitations of regulated entities, if the solicitation is on behalf of a charitable nonprofit organization granted a tax exemption by the Internal Revenue Service under Section 501(c) of the Internal Revenue Code. You pose the following questions in light of the above-referenced changes to the Code:

- ◆ May employees of the Revenue Cabinet solicit corporations regulated by the Cabinet for donations to KECC for the 2003 KECC campaign?

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- ◆ If allowable, as part of such a solicitation, may the Revenue Cabinet publicly acknowledge the corporate donor?
- ◆ In light of the 2002 enactment of the language at KRS 11A.055, is the Commission's position still as stated in Advisory Opinion 02-22, that a state agency may not allow a private book vendor to set up on state property, even if the book vendor contributes a percentage of profits to KECC?

KRS 11A.055(1) provides:

(1) Any provision of KRS Chapter 11A to the contrary notwithstanding, a state agency or a public servant may raise funds, either individually or as a department or agency, for a charitable nonprofit organization granted a tax exemption by the Internal Revenue Service under Section 501c of the Internal Revenue Code without violating the provisions of this chapter. Raising of funds shall include but not be limited to holding events for the benefit of the charitable organization, contacting potential donors, providing prizes, and engaging in other forms of fundraising and providing the funds thus raised to the charitable organization.

As to the first question posed, it is clear that the Cabinet Secretary, as well as employees of the Cabinet, may, under the provisions of KRS 11A.055(1), solicit donations from regulated entities for the benefit of KECC. However, the Commission cautions the Cabinet to exercise great care in soliciting donations from corporations or individuals when an appearance of a conflict may exist due to taxation disputes or vendor selection.

Regarding your second question, the Commission has consistently stated its opposition to any form of endorsement or activity by a state agency that could be perceived as endorsement of one entity over another. See Advisory Opinions, 00-18, 01-21, and 02-22. These opinions were issued prior to the enactment of KRS 11A.055. However, the Commission still believes that state agencies must take care not to endorse or promote one private company over another, even if such endorsement is for fundraising as allowed in KRS 11A.055(1). Thus, the Cabinet should not publicly acknowledge a corporate donor to the KECC effort.

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Finally, you ask if the Commission's opinion expressed in Advisory Opinion 02-22 is still valid in light of the enactment of KRS 11A.055(1). In Advisory Opinion 02-22, the Commission opined that a private book company should not be allowed onto state property to conduct a book sale to help with a fundraiser for an employee recognition program. As you point out, the exception for charitable solicitations enacted in KRS 11A.055(1) came after the Commission's opinion expressed in Advisory Opinion 02-22. In light of the language of KRS 11A.055(1) that allows "...engaging in other forms of fundraising" by state agencies, it appears that the Commission must modify Advisory Opinion 02-22 to the extent that Advisory Opinion 02-22 conflicts with KRS 11A.055(1). However, KRS 11A.055(1) also requires "...and providing the funds thus raised to the charitable organization." The practical effect of this may be that a private book vendor could be allowed to set up on state property, but would have to turn over all profits raised to the KECC, not just a percentage.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.