

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 03-37**

October 16, 2003

RE: May the Kentucky Youth Challenge Foundation accept donations of items such as toilet paper, soap, etc. from Sam's Club as a "Bonus Grant" for the benefit of the Bluegrass Challenge Academy?

DECISION: Yes, however if the Bluegrass Challenge Academy accepts such products from the Foundation, the Department should no longer consider Sam's Club and Wal-Mart as vendors in the future if employees involved in procurement are aware of the ultimate source of the donations.

This opinion is in response to your request of August 26, 2003, for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 16, 2003 meeting of the Commission and the following opinion is issued.

The Kentucky Youth Challenge (also referred to as the "Bluegrass Challenge Academy") is a program within the Kentucky Department of Military Affairs (the "Department"). The Department employees are assigned to the program. It is a "match" state and federally funded program. According to its website, the Bluegrass Challenge Academy's mission is "...to train and mentor selected at-risk youth to become contributing members of society." The Bluegrass Challenge Academy also is aided in this endeavor by the Kentucky Youth Challenge Foundation, Inc. (the "Foundation") which you state is a charitable non-profit organization with a tax exemption pursuant to Section 501(c)(3) of the Internal Revenue Code. The Foundation provides scholarships for youth to attend the Bluegrass Challenge Academy.

One of the parents of a youth in the program has approached several businesses in the Paducah area about the possibility of their providing support for Bluegrass Challenge Academy. One business, SAM's Club, has indicated a willingness to make a "Bonus Grant" to the Foundation of surplus items such as toilet paper, soap, phone cards, etc., for the benefit of the Bluegrass Challenge Academy. You ask the Commission to advise you of any limitations that

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may exist to this arrangement, and if the items may be donated directly to the Bluegrass Challenge Academy as a division within a state agency under the Department. You state that the Department does business with Wal-Mart, which is under the same parent corporation as SAM's club.

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.

In previously issued Advisory Opinions 02-48 and 02-2, the Commission held that, based on KRS 11A.045(1), state agencies (in addition to employees of the agency) are prohibited from accepting gifts from vendors of the state agency. Thus, the Bluegrass Challenge Academy could not accept donations of items directly from SAM's club, as it is part of a corporation with which the Department does regularly conduct business.

Conversely, the Foundation is not prohibited from accepting such donated items because it is not a state agency under the jurisdiction of the Commission. However, if the items are solicited to benefit the Bluegrass Challenge Academy, the Commission believes that, in substance, the donation is being made to the Bluegrass Challenge Academy and not the Foundation. Thus, even if the items are donated from the Foundation to the Bluegrass Challenge Academy, a possible conflict of interest could occur if the employees of the Bluegrass Challenge Academy and the Department who are responsible for purchasing are aware of the ultimate source of the donation.

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If a parent, or other non-employee representative of the Foundation, accepts the products from Sam's Club, and in turn donates them to the Bluegrass Challenge Academy without identifying to any employees the ultimate source of the donation, then an actual conflict of interest can be avoided. If any employees are aware of the original source of the donation, however, the Commission believes that a potential for conflict still exists, and in order to avoid any future conflicts, the items should only be accepted from the parent or Foundation member if the Department no longer considers Sam's Club and Wal-Mart as vendors in the future.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.