

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 04-19

May 27, 2004

RE: May a state employee solicit donations for a local (private) help agency for the benefit of clients of his state agency?

DECISION: Yes, within limitations.

This opinion is in response to your May 5, 2004 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 27, 2004 meeting of the Commission and the following opinion is issued.

The relevant facts are as follows. You are employed by the Cabinet for Health and Family Services ("CHFS"), Department for Community Based Services ("Department") as a Social Service Aide. In your position you have clients with minor children, and some of your clients often have difficulty with past-due utility bills, etc. The Department has a Preventive Assistance Fund that can be used to help such families if the children are at risk of being removed from the home if utilities are cut off, but certain criteria must be met in order to utilize these funds, and the Department cannot always immediately help because of limitations on actual cash assistance.

You mention that in Boyd County there is a help agency named CARES ("Community Assistance and Referral Service, Inc.) that helps people with needs such as past-due utility bills. You propose to ask CARES to set up an account that would help your agency's clients only. The funds that would be placed in that account would be from monies you raise from solicitation of anyone you believe will donate for this purpose.

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

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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.

The Commission has opined in previously issued advisory opinions that an employees should not solicit donations from persons or businesses that are regulated by or are doing business with the state agency for which they work. However, as provided in KRS 11A.055(1) above, if CAREs is a non-profit organization granted a tax exemption by the Internal Revenue Service under Section 501(c) of the Internal Revenue Code, and is also a charitable organization, you could in fact solicit donations of funds (and presumably in-kind contributions as well) for the benefit of CAREs from entities the Department or CHFS regulates or with which it does business. You also would not be prohibited from soliciting CAREs to set up such an account if CAREs is a charitable organization.

Conversely, if CAREs is not a charitable, non-profit organization granted a tax exemption by the Internal Revenue Service under Section 501(c) of the Internal Revenue Code, you may solicit donations for CAREs, but not from persons or businesses that are regulated by or doing business with the Department or CHFS. See Advisory Opinions 96-24 and 99-2, enclosed. Also, if CAREs is regulated by or seeks funds from the Department or CHFS, and is not a charitable organization, you should not solicit CAREs to set up such an account.

Individuals who are not CHFS employees are not prohibited from soliciting CAREs, or any persons or businesses, to set up or donate to this special account.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinion 96-24
Advisory Opinion 99-2