

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 05-28

May 27, 2005

RE May employee accept wood from Habitat for Humanity that was donated by company regulated by the employee's state agency?

DECISION: No.

This opinion is issued in response to your May 18, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 27, 2005 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Kentucky Housing Corporation ("KHC") as a housing inspector in western Kentucky. As part of your official duties for KHC, you inspect housing projects that are in the development phase and ensure compliance with applicable laws and regulations.

Approximately five months ago, a development company from Arkansas completed a KHC funded project in your area and had surplus building materials comprised of used, fire-retardant, and new wood. The normal business practice for the development company is to dispose of the excess material because the cost to ship and store the wood would exceed the value of the material.

You communicated to a local Habitat for Humanity ("HFH") chapter that such wood was available and the chapter contacted the development company and subsequently accepted the material as a donation. The approximate value of the donation to the HFH chapter is \$6100. Since that time, the HFH chapter determined that it couldn't use the fire retardant wood due to the hazardous chemicals it contains and the fact that it may not be cut by an inexperienced builder nor be disposed of except at certified landfills.

The HFH chapter has offered you the fire-retardant wood that has an approximate value of \$600. You believe that you can accept this wood without compromising your position as a

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Housing inspector, nevertheless you request the Commission's consideration to ensure that your proposed action is consistent with KRS Chapter 11A and Title 9 of the Kentucky Administrative Regulations. If the Commission advises against your acceptance of this material, you ask if it would be allowable for you to assist the HFH chapter in finding a certified landfill to dispose of the fire-retardant wood.

KRS 11A.020(1)(c) and (d) provide:

(1) No public servant, by himself or through others, shall knowingly:

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(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Also, 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.

As provided above, an employee is prohibited from accepting gifts or gratuities from persons or businesses regulated by the state agency for which the employee works or supervises. This provision was crafted so that actions and decisions made by state employees in the conduct of their duties would be made independently and objectively. The Commission had also opined that employees should not solicit donations from persons or businesses doing business with or regulated by their state agencies.

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Thus, although it does not appear that you would be receiving a “gift “ directly from the development company that is regulated by KHC, but rather from the HFH chapter, it does appear if you were to accept the donation of wood from the HFH chapter, and you helped to facilitate the initial donation of the wood to the HFH chapter, that you may be using your official position to give yourself an advantage or a financial gain.

Thus the Commission believes that you should not accept the fire-retardant wood from the HFH chapter, but would not be prohibited from assisting the HFH chapter in the disposal of the wood.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: James S. Willhite