

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 05-34

September 2, 2005

RE: Does proposed procedure to accept and distribute donations for legal aid assistance comply with KRS 11A.045 and Advisory Opinion 05-29?

DECISION: Yes.

This opinion is issued in response to your July 6 and August 26, 2005 requests for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 2, 2005 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You obtained an advisory opinion from the Commission on May 27, 2005 regarding whether employees could accept gifts for legal aid from a corporation (trust fund) established to assist the employees with the payment of legal fees. Since the issuance of that opinion, the expected Trustee of the trust fund, who has no relationship with state government, plans to take certain precautions in administering the monies of the fund. These precautions are designed to ensure that the donors have as little way as possible to know who is donating for the benefit of individuals working in a particular agency of government, and to ensure to the maximum extent possible that the beneficiaries do not know who has donated money on their behalf, or anyone else's behalf.

The expected Trustee proposes to establish a Trust that will raise funds and solicit donations from the general public to carry out the purpose of the Trust which is payment of the personal legal fees and related expenses incurred by or on behalf of the beneficiaries in connection with the investigation by the Kentucky Attorney General of employment matters involving the merit system for state government employment and the defense or conduct of any legal or administrative proceedings or investigation involving the beneficiaries concerning, resulting from, or related in any way to the Attorney General's investigation, either judicial or administrative.

The Trustee will solicit donations and will have each donor complete a questionnaire (see attached) to ascertain if the donor does business with, is regulated by, is seeking a grant from, or in some way is attempting to influence the actions of any state agency. The donor's check and questionnaire will be forwarded to a Certified Public Accountant ("CPA") the Trust will retain. The check will be deposited into an account that is subject to the instrument of trust. Based on the completed questionnaire, monies from specific donors will be designated to separate "funds" or sub-trusts" and disbursed to specific beneficiaries in strict accordance with KRS 11A.045, as interpreted by Advisory Opinion 05-29. Unless required by law or the Executive Branch Ethics Commission, the Trustee shall not disclose the identity of any donor to any beneficiaries. You ask if this procedure will enable employees who accept disbursements from the fund to comply with KRS 11A.045 and Advisory Opinion 05-29.

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 Advisory Opinion 05-29, the Commission stated that assistance provided to employees for payment of legal fees is, in substance, a gift from the donors to the recipients, even if a separate entity is created to distribute the monies. It further stated the employees could accept assistance for payment of legal fees from a trust fund only if the donors to the fund (persons or businesses) do not do business with, are not regulated by, and are not seeking to influence the actions of the individual state agencies for which each employee works.

The Commission notes that the expected Trustee proposes to establish a Trust, to be administered by a CPA, that will accept, track, and disburse donations so that an employee does not receive monies from any person or business that is doing business with, is regulated by, or in some way is seeking to influence the state agency for which the employee works or which he supervises.

Such a system seeks to avoid actual conflicts for employees receiving funds from the Trust. The Commission believes that designating separate “funds” or “sub-trusts” within the Trust serves to remove the potential conflicts that may exist for employees in accepting monies from the Trust.

However, before accepting assistance from the Trust, or before accepting payments from the Trust on his behalf made directly to a legal services provider, each employee should ascertain that the donors to his “fund” or “sub-trust” are not doing business with, regulated by, seeking grants from, or in any way seeking to influence the state agency for which the employee works or over which he has supervisory authority. Further, in order for employees to accept distributions from the Trust, the Trust should not be established by anyone registered as an executive agency lobbyist, holding a contract with, or attempting to influence the actions of any of the agencies which employ the beneficiaries. An appearance of a conflict, if not an actual conflict, may exist for employees to accept the services of such an individual to establish a trust fund on their behalf.

Also, KRS 11A.050 (3)(k) requires each executive branch elected official or officer who receives assistance from the Trust, or has payments from the Trust made to legal services providers on his behalf, to disclose the source of the gift, including the source’s name and address, on his annual statement of financial disclosure to be filed with the Commission, if the value of the assistance is more the \$200. The source should include the names of the donors to the employee’s “fund” or “sub-trust.” Although the Trust, a private entity, is not subject to the Kentucky Open Records Act, such disclosure by employees will be subject to the Kentucky Open Records Act.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb

Attachment

KENTUCKIANS FOR JUSTICE LEGAL DEFENSE FUND
C/O BILL STONE, TRUSTEE
P. O. BOX 1203
LOUISVILLE, KENTUCKY 40201

Thank you for contributing to this legal defense fund. Please take a moment to read and fill out this form to document if you have any dealings with the Kentucky state government. Then, please sign and date where indicated. According to the Kentucky Executive Branch Ethics Commission:

“EXECUTIVE BRANCH EMPLOYEES...MAY ACCEPT ASSISTANCE FOR PAYMENT OF LEGAL FEES FROM THE FUND IF THE DONORS TO THE FUND (PERSONS OR BUSINESSES) DO NOT DO BUSINESS WITH, ARE NOT REGULATED BY, AND ARE NOT SEEKING INFLUENCE IN THE ACTIONS OF THE INDIVIDUAL STATE AGENCIES FOR WHICH EACH EMPLOYEE WORKS.”

Executive Branch Ethics Commission
Advisory Opinion 05-29
May 27, 2005

In order to ensure compliance by state employees with KRS 11A.045(1) and the above opinion, please answer each of the following questions. If you answer “yes” to any of the questions below, at least some employees may not accept your donation.

Example: If you as an individual or business, do business with or are directly related in any way by state agency A, no amount of your donation can go to pay for the legal fees for ANY employee of state agency A.

Questionnaire: By answering the following questions, the fund will ensure that your contribution is properly assigned:

Are you, as an individual or business, registered as an Executive Agency Lobbyist, Employer, or Real Party in Interest with the Executive Branch Ethics Commission or are you attempting to influence a state agency?
Yes or No (circle one)

Do you, as an individual or business, or a company in which you have a controlling interest, do business with any agency of state government or are directly regulated by an agency of state government?
Yes or No (circle one)

Are you, as an individual or business, or a company in which you have a controlling interest seeking a grant from any agency of state government?
Yes or No (circle one)

Are you, as an individual or business, or a company in which you have a controlling interest involved in any litigation or administrative action with any agency of state government?
Yes or No (circle one)

If you answered “yes” to any of these questions, please provide a written description of the agencies and actions involved so that the Fund may determine which employees, if any, may accept your donation. **Regardless of whether you have answered “yes” to any questions, please return this questionnaire with your donation.**

Cabinet(s) of state government with which you answered “yes” to the above questions:

1. _____
2. _____
3. _____
4. _____

Description:

Full Name: _____

Business Name: _____

Business Address: _____

City, State ZIP: _____

(Date)

(Signature)

Please note that your donation will not be tax deductible, and gift taxes may apply. You may therefore wish to consult your tax advisor.