

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 06-15

June 16, 2006

RE: May the Division of Historic Properties solicit donations of historical items and monuments, or cash donations in lieu thereof, from the public without creating the appearance of a conflict under KRS Chapter 11A?

DECISION: Yes, with certain restrictions.

This opinion is in response to your May 11, 2006, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 16, 2006, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Division of Historic Properties ("Historic Properties"), within the Finance and Administration Cabinet (the "Cabinet") is charged, under KRS 42.019, with overseeing the management and preservation of state-owned historical properties, including but not limited to the State Capitol. Pursuant to KRS 11.026(1), the director of Historic Properties also acts as the state curator for the Historical Properties Advisory Commission, and is responsible for "the preservation, restoration, acquisition, and conservation of all decorations, objects of art, chandeliers, china, silver, statues, paintings, furnishings, accouterments, and other aesthetic materials that have been acquired, donated, loaned, and otherwise obtained by the Commonwealth of Kentucky for the Executive Mansion, the Old Governor's Mansion, the New State Capitol, and other historic properties under the control of the Finance and Administration Cabinet."

You indicate that Historic Properties is contemplating the issuance of a Request for Information ("RFI") seeking responses from the public regarding the availability of historical items and monuments that could be donated for display in a planned historical monument park on the Capitol grounds. The RFI would specifically note that all donors would have to comply with the laws of the Commonwealth, including any applicable ethics rules, and that any potential donors who do or have done business with the agency in the past would be ineligible to donate.

You ask whether Historic Properties, by itself, or through the Historical Properties Advisory Commission, may solicit donations of historical items and monuments from the public through an RFI process, without creating the appearance of a conflict under KRS Chapter 11A.

You also ask whether Historic Properties may solicit cash donations to establish a historical monument park, in lieu of actual historical items and monuments, without creating the appearance of a conflict of interest under KRS Chapter 11A, and, if so, what parameters need to be followed in implementing this process.

KRS 11A.045(1) provides:

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.

KRS 11A.010 defines "gift" and "agency" respectively, as follows:

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; "gift" does not include gifts from family members, campaign contributions, or door prizes available to the public;

(10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his appointing authority is employed, unless his agency is attached to the appointing

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authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department;

In previously issued advisory opinions, the Commission has interpreted these provisions to include that a public servant should neither accept nor solicit money, goods, services, or donations, from persons or businesses that do business with or are regulated by the agency for which the employee works, unless the gift or the solicitation is to raise funds for a charitable, nonprofit organization or is for crime prevention, drug and alcohol prevention, or traffic safety programs. In addition, an employee should not accept or solicit donations from a person or business that is seeking to do business with or influence in some way the agency for which the employee works, unless the donation is to raise funds for a charitable, nonprofit organization or is for crime prevention, drug and alcohol prevention, or traffic safety programs. Further, several previously issued advisory opinions establish the Commission's long-standing consistent interpretation as precedent that in addition to public servants, state agencies also may not solicit or accept gifts from persons or businesses that do business with, are regulated by, receive grants from, or are seeking to influence the actions of the particular state agency.

In reviewing this request, the Commission noted that it must be determined whether the Cabinet is one agency for purposes of the Executive Branch Code of Ethics or whether it is comprised of several agencies within one cabinet. In the definition of "agency" noted above, entities within or attached to a cabinet, which have characteristics that are separate and distinct from the agency of the appointing authority, are considered to be separate agencies from the Cabinet. The Commission believes that the Department of Revenue within the Cabinet has characteristics that are of a separate independent nature distinct from the Cabinet. Thus, the Commission believes that, for purposes of the ethics code, the "agency" of which Historic Properties is a part includes all of the Finance Cabinet except for the Department of Revenue.

Consequently, neither Historic Properties, nor its employees, may solicit donations of historical items and monuments from the public through an RFI process, from persons or businesses that do business with, are regulated by, receive grants from, or are seeking to influence the actions of the agency, which in this case would be the Cabinet, not including the Department of Revenue. Conversely, Historic Properties and its employees may solicit historical items without creating the appearance of a conflict under KRS Chapter 11A, as long as it does not solicit or accept such donations from persons or businesses that do business with, are regulated by, receive grants from, or are seeking to influence the actions of the agency.

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Likewise, Historic Properties may solicit cash donations to establish a historical monument park, in lieu of actual historical items and monuments, without creating the appearance of a conflict of interest under KRS Chapter 11A, so long as it does not solicit such donations from persons or businesses that do business with, are regulated by, receive grants from, or are seeking to influence the actions of the agency.

Members of the Historical Properties Advisory Commission are not subject to the Executive Branch Code of Ethics and thus are not prohibited from soliciting any person or business for historical items, monuments, or monetary donations. However, according to Advisory Opinions 03-37 and 06-6 (copies of which are enclosed), if items are solicited for the purpose of giving them to the agency, in substance the donation is for the benefit of the agency and, although not prohibited, a possible conflict could occur.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb

Enclosure: Advisory Opinion 03-37
Advisory Opinion 06-6