

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 06-19**

August 25, 2006

**RE:** May the Kentucky Commission on Human Rights accept compensation for training conducted?

**DECISION:** Yes, within limitations.

This opinion is issued in response to your June 20, 2006, request for an Advisory Opinion from the Executive Branch Ethics Commission (“Commission”). This matter was reviewed at the August 25, 2006, meeting of the Commission and the following opinion is issued.

You state that the Kentucky Commission on Human Rights (“KCHR”) is a state government agency charged with the enforcement of the Kentucky Civil Rights Act. The Act prohibits discrimination on the basis of race, color, religion, sex, age, disability, familial status, smoking status and national origin. In addition to the enforcement of the Kentucky Civil Rights Act, the KCHR has a statutory role in addressing unlawful discrimination in proprietary schools and in private clubs.

You indicate that the KCHR is divided into four organizational units: 1) the Enforcement Branch; 2) the Legal Branch; 3) the Research and Information Branch; and 4) the Budget and Personnel Administration Branch. The KCHR strives to eradicate unlawful discrimination within the Commonwealth of Kentucky through: 1) the investigation of discrimination complaints; 2) the litigation of discrimination cases in which probable cause is found; and 3) public awareness programs and initiatives. The KCHR participates in a work sharing agreement with the United States Equal Employment Opportunity Commission (“EEOC”), and in a contract with the United States Department of Housing and Urban Development (“HUD”). Pursuant to these agreements, the Commission dual-files discrimination complaints with the EEOC and HUD. In addition to the above-mentioned funding sources, the KCHR is authorized to receive gifts, bequests, grants, or other payments, public or private, to help finance its activities. Training and educational activities are among KCHR’s central statutory functions. KCHR conducts training and educational activities all over the Commonwealth.

You state that training is a routine element of conciliation agreements and orders issued by KCHR. Training is recommended in nearly every case in which a resolution occurs other than a finding of no probable cause. These training requirements are authorized by statute (KRS 344.230(2)). Broad injunctive relief, which may include training, is also provided for in fair housing cases (KRS 344.645, KRS 344.660, KRS 344.665, and KRS 344.670). The statutes governing KCHR conciliations also allow for training requirements (KRS 344.200(4)).

KRS 344.190(6) provides: "In the enforcement of this chapter, the Commission on Human Rights shall have the following powers and duties . . . to accept gifts or bequests, grants, or other payments, public or private, to help finance its activities." In accordance with this authority, you indicate that KCHR proposes to offer training services to the general public, including individuals and legal entities that are subject to the provisions of the Kentucky Civil Rights Act. These services will be provided only when requested by an individual or entity that seeks to receive training. The Commission proposes to offer these services at prevailing rates, \$500 to \$1000 depending on the length and complexity of the training, plus reimbursement for necessary travel expenses reported by KCHR staff in travel reimbursement requests submitted in accordance with 200 KAR 2:006. You ask whether the Executive Branch Code of Ethics precludes KCHR from receiving payment for these training services.

KRS 11A.045(1), relating to the acceptance of gifts, provides the following:

(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.

"Gift" is defined in KRS 11A.010(5) as "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." (Emphasis added).

The Commission's longstanding consistent interpretation of KRS 11A.045(1) is that in addition to public servants, state agencies likewise may not solicit or accept gifts from persons or businesses that do business with, are regulated by, are seeking grants from, are involved in litigation against, or are lobbying or attempting to influence the actions of that state agency. (See Advisory Opinion 02-48, enclosed). While KCHR has the statutory authority to accept gifts or bequests, grants, or other payments, to help finance its activities, the Commission believes KCHR must do so within the parameters of the Executive Branch Code of Ethics.

It does appear that by charging a fee for its training services, KCHR will receive financial support from persons or businesses that are regulated by or have been involved in litigation against KCHR. However, since you indicate that KCHR will offer these training services at prevailing rates, it is the opinion of the Commission that KCHR will be providing "consideration of equal or greater value" in the form of training in exchange for the fee charged, plus necessary travel expenses. As such, the fee to be charged does not meet the definition of "gift" as that term is used in the Executive Branch Code of Ethics. Thus the provisions governing the acceptance of gifts would not apply to the situation you describe.

The Commission further believes that, although an inherent conflict may exist if the KCHR provides training services to individuals or entities for a fee where that training is part of a conciliation or order issued by KCHR, as long as those individuals or entities are free to obtain the training from whomever they choose, such conflict will be reduced. Were KCHR to require that the training be obtained solely from KCHR for a fee, then a greater potential for a conflict of interest would exist. The Commission cautions the KCHR not to solicit individuals or entities it regulates. Accordingly, such training services should not be detailed or offered as part of a conciliation or order issued by the KCHR.

To summarize, as long as the fee to be charged for the training does not exceed the expense of providing the training, affected individuals or entities are free to choose where they obtain the training, and KCHR does not solicit regulated persons or entities regarding such training services, KCHR may conduct training, and accept compensation for that training and reimbursement of travel costs, where that training is part of a conciliation or order issued by KCHR.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: John A. Webb

Enclosure: Advisory Opinion 02-48  
Advisory Opinion 97-9  
Advisory Opinion 99-29  
Advisory Opinion 04-5