

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 06-20**

August 25, 2006

RE: May legal defense fund be established for the Governor to accept donations from individuals and businesses?

DECISION: Yes, within limitations.

This opinion is issued in response to your June 15, 2006 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 16 and August 25, 2006 meetings of the Commission and the following opinion is issued.

You state that many individuals have an interest in contributing to a "legal defense fund" that may be established for the Governor to assist in defraying costs and expenses related to the recently filed misdemeanor charges. To ensure that all provisions of Kentucky's Executive Branch Code of Ethics are followed, you ask the following:

- 1) *May a legal defense fund established for the Governor accept donations from individuals and companies, and what limitations are there for collection and distribution of such funds?*
- 2) *May the chairperson or trustee of such a fund be an individual who serves on a board or commission affiliated with state government, even though that person is not subject to the jurisdiction of the Executive Branch Ethics Commission?*

Advisory Opinions 05-29 and 05-34 (copies of which are enclosed) were issued by the Commission in response to similar questions for other state employees. Based on those opinions, executive branch public servants (including the Governor) may accept assistance for payment of legal fees from a legal defense fund set up for such a purpose if the donors to the fund (persons or businesses) do not do business with, are not regulated by or in any way are seeking to influence actions of the state agency which the employee supervises.

One question that needs to be addressed for the Governor is whether he is considered to supervise all state agencies for purposes of accepting gifts under the Executive Branch Code of Ethics. Advisory Opinion 04-7 (a copy of which is enclosed) provides some guidance regarding the acceptance of gifts by the Governor that are not solicited; the Commission believes that although the Governor has ultimate authority over every executive branch agency, he should not be considered to be supervising every executive branch agency in applying the provisions of KRS 11A.045 (1) provided below:

(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.

Only when the Governor is directly involved or has direct participation in interests before a particular agency should the Governor be considered to be supervising that agency for purposes of acceptance of gifts.

Thus, although the Commission believes that a legal defense fund may be established for the Governor and funds may be solicited, the Governor should not accept any donations from the fund that have been donated by a person or business that may have interests before a state agency if the Governor is directly involved or has direct participation in those interests. The Governor may accept donations from the fund if donations to the fund are not from persons or businesses that have interests before state agencies with which the Governor has had or will have direct involvement or participation in such interests. Such action by the Governor will serve to avoid any actual conflicts of interest for the Governor. The Commission realizes that such direct involvement may, at times, be difficult to determine for the Governor. Accordingly, if any question exists as to whether the Governor has had or will have involvement with interests of a particular person or entity that wishes to make a donation, and thus a possible conflict may exist, the Commission advises that the fund decline any such gift.

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Consequently, if the fund has collected any donations from persons or entities from which the Governor may not accept gifts, such contributions should be returned to the contributors in order for the Governor to accept any gifts from the fund.

The chairperson or trustee of such a fund may be an individual who serves on a board or commission affiliated with state government provided no other conflict for the person exists, such as serving as a lobbyist seeking to influence the actions of the Governor or Governor's Office.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: John A. Webb

Enclosures: Advisory Opinion 05-29  
Advisory Opinion 05-34  
Advisory Opinion 04-7