

Executive Branch Ethics Commission  
**ADVISORY OPINION 07-15**  
May 10, 2007

AUTHORIZATION FOR EXCEPTION TO KRS 11A.045(1)

EXCEPTION NO. 2007-2

**RE:** May Department of Veterans' Affairs accept truck from company that is constructing a state veterans' cemetery?

**DECISION:** Yes, pursuant to exception allowed by KRS 11A.045(1).

This opinion is issued in response to your April 25, 2007 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 10, 2007 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. The Kentucky Department of Veterans' Affairs ("Veterans' Affairs") currently operates a state veterans' cemetery in Hopkinsville. A new state cemetery under construction near Radcliffe (Fort Knox) and is scheduled to open June 1. A third cemetery is under construction in Williamstown. Two future state veterans' cemeteries are also in the planning stages. The company that is constructing the cemetery in Williamstown is not the same company that is constructing the cemetery in Fort Knox. The company that is the contractor of the cemetery in Fort Knox (the "contractor") recently offered to give to Veteran's Affairs a 2000 Ford F-250 pickup truck which has an estimated value of \$12,500.

You state this truck is a surplus vehicle for the company and is no longer required for the company's daily work. The company manager who has offered the truck to Veteran's Affairs is the son of the company president and the grandson of a Pearl Harbor survivor veteran. You believe that this offer was made because the truck is surplus property and as an expression of patriotism with a desire to help our state's veterans.

The donated truck would be used by the cemetery to transport equipment from the local area vendors to and from the cemetery, carefully restricted to use in conjunction with cemetery operations, and also with a prohibition against private use by employees of Veterans' Affairs. The donation of this vehicle would be a substantial cost savings to the state, including the cost of the vehicle and travel expenses incurred when employees have to use their own vehicles for local area travel.

You state that any future contracts that will be awarded are regulated by state law and the Finance Cabinet, and do not allow any influence by Veterans' Affairs as to which company will be awarded the contract. You believe that the bidder is selected in such a manner that no possible influence by Veterans' Affairs is allowed.

Even though the donation would be from a company that Veterans' Affairs is currently doing business with, you believe that there are sufficient safeguards to prevent an appearance of favoritism or impropriety. Thus, Veterans' Affairs requests an exception to the gift law pursuant to KRS 11A.045(1) in order to accept the truck.

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.

KRS 11A.010(5) provides:

(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;

In Advisory Opinion 02-2 (a copy of which is enclosed), the Commission concluded that Veterans' Affairs should not accept donations of items and services for the construction of nursing home facilities from persons or businesses that were seeking to do business with the agency. The Commission's long-standing interpretation of KRS 11A.045(1) prohibits state agencies (in addition to state employees) from accepting gifts, as defined above, from persons or businesses with which they do business.

Because you state that any future contracts to be awarded for construction of state veterans' cemeteries are regulated by state law and no possible influence by employees of Veterans' Affairs is allowed, the Commission believes that an appearance of a conflict will not

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exist if Veterans' Affairs were to accept the truck from the construction company. Accordingly, the Commission grants an exception to the gifts law pursuant to KRS 11A.045(1), as long as employees of Veterans' Affairs have no input or involvement whatsoever in any future contract specifications or contracts of state veterans' cemeteries, if a potential exists for the company donating the truck to seek such contracts.

In this specific matter, the Commission believes that the goodwill generated by the donation outweighs any potential for conflict that could exist.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Vice Chair: Cynthia C. Stone

Enclosure: Advisory Opinion 02-2