

Executive Branch Ethics Commission
ADVISORY OPINION 07-6
February 23, 2007

RE: 1) May state agency seek discounts from health clubs or weight loss programs on behalf of Kentucky Employee Health Plan and/or Get Healthy Kentucky members?

DECISION: 1) Yes, within limitations.

This opinion is issued in response to your February 7, 2007, request for an Advisory Opinion from the Executive Branch Ethics Commission (“Commission”). This matter was reviewed at the February 23, 2007, meeting of the Commission and the following opinion is issued.

You are the Acting Executive Director of the Governor’s Office of Wellness and Physical Activity (the “Office”), which operates the Get Healthy Kentucky program. You state that in accordance with KRS 194A.085, your office has the responsibility including but not limited to:

- Create a strategic plan to design Kentucky's wellness efforts;
- Develop, implement, and coordinate all physical activity and wellness related programs for residents of the Commonwealth;
- Coordinate the efforts of the Governor's Council on Wellness and Physical Activity with the efforts of the Education Cabinet, the Cabinet for Health and Family Services, and the Personnel Cabinet;
- Design information campaigns to raise public awareness and promote citizen engagement regarding the critical nature of wellness in the state and to increase the will to make quality resources and services more widely available.

You state that obesity rates in Kentucky and the rest of the nation have increased to epidemic proportions with rates of obesity increasing by 60 percent in the last decade. Kentucky currently has the fifth highest rate of obesity in the country with over 63 percent of Kentuckians being overweight or obese. The trend not only translates into poor clinical health through increased prevalence rates of diabetes, heart disease and other chronic conditions it also results in a significant financial impact. It is estimated that Kentucky spends over one billion dollars annually on obesity related conditions.

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Your office has received a number of requests from state employees regarding your ability to negotiate discounts on health club, gym memberships, or weight loss programs on behalf of Kentucky Health Plan members (state employees) and/or Get Healthy Kentucky members (any Kentucky resident who wishes to participate). These members would be individually responsible for payment of these memberships should they choose to join.

You request an opinion regarding the following questions:

1. *On behalf of Kentucky Employee Health Plan and/or Get Healthy Kentucky members, may the Office request a discounted monthly or annual rate from one or more health clubs or weight loss programs throughout the state?*
2. *In following up on the first question, could the Office request a waiver of enrollment or similar fees in addition to or in the alternative of a discounted monthly or annual rate?*
3. *May the Office request a free trial membership from one or more health clubs or weight loss programs statewide in addition to or in the alternative of requesting discounted rates?*
4. *Furthermore, may the Office promote awareness of these discounted rates/waived fees/free trial memberships among Kentucky Employee Health Plan and Get Healthy Kentucky members?*

KRS 11A.005(1) provides:

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

- (a) A public servant be independent and impartial;
 - (b) Government policy and decisions be made through the established processes of government;
 - (c) A public servant not use public office to obtain private benefits;
- and
- (d) The public has confidence in the integrity of its government and public servants.

Additionally, KRS 11A.020(1)(d) provides:

(1) No public servant, by himself or through others, shall knowingly:

...

- (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

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The following advice is provided by the Commission to ascertain that what your office is proposing does nothing to affect the impartiality of public servants or does anything to give an unfair advantage to public servants. In Advisory Opinion 02-21 (a copy of which is enclosed), the Commission stated its belief that a state agency is not prohibited from soliciting corporate donations for state-sponsored programs, provided the entities solicited have no business or regulatory relationship with the agency and provided the entities are not lobbying or seeking to influence matters of the state agency. However, the Commission has also said that state agencies and employees acting as representatives of their agencies must take great care not to appear that they are endorsing or promoting a specific product or company.

Based on these principles, the Commission is of the opinion that the Office may seek discounted monthly or annual rates and/or waivers of enrollment or similar fees and/or free trial memberships from health clubs or weight loss programs throughout the state on behalf of Kentucky Employee Health Plan and/or Get Healthy Kentucky members, as long as the entities solicited have no business or regulatory relationship with your agency and provided the entities are not lobbying or seeking to influence matters of your agency. In seeking such discounts, the Office should take care to make the provision of such discounts, fee waivers, or trial memberships an option for any health club or weight loss program in the state that wishes to offer such incentives, and likewise the Office should take care to avoid the appearance that it is endorsing or promoting any particular health club or weight loss program.

Regarding whether the Office may promote awareness of these discounted rates/waived fees/free trial memberships among Kentucky Employee Health Plan and Get Healthy Kentucky members, the Commission believes that mere notification of the availability of these offers does not publicize, promote, or endorse the health clubs or weight loss programs, and is therefore acceptable. The Office should be careful not to publicly advertise these clubs or programs beyond the fact that they are offering a discount, fee waiver, or trial membership. See Advisory Opinion 06-21, enclosed.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: John A. Webb

Enclosures: Advisory Opinion 02-21
Advisory Opinion 06-21