

Executive Branch Ethics Commission

ADVISORY OPINION 08-1

February 29, 2008

RE: Are children of employees of veterans center prohibited by the Executive Branch Code of Ethics from inclusion in resident's will?

DECISION: No, but KDVA should consider the consequences of such inclusion and adopt internal polices to address the matter.

This opinion is issued in response to your October 10 and October 30, 2007 requests for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 14 and February 29, 2008 meetings of the Commission and the following opinion is issued.

You provide the relevant facts as follows. A veteran who is a resident at one of the state veteran nursing homes operated by the Kentucky Department of Veterans' Affairs ("KDVA") has asked his private attorney to draft a will leaving all of his money/property to the children of some of the KDVA employees who care for him. He has an estate of approximately \$200,000, has siblings and nieces and nephews, but no close family members. When questioned of his intent, he stated the employees have cared for him very well and are single parents.

He plans to leave his estate to seven children with each child receiving \$25,000-\$30,000. You ask whether employees and/or dependent children of employees may accept such a gift from a veterans center resident within the parameters of the Executive Branch Code of Ethics. If not, you ask whether, pursuant to KRS 11A.045(1), the Commission could grant an exception to the gifts law to allow the dependent children of employees to accept such a gift.

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

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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) to mean 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.

The Commission believes, however, that the inclusion of an individual in a will to inherit property is not considered a “gift” until that individual is deceased and the property actually is transferred to the individual. Gift is not defined to include the promise of a gift or the inclusion in a will. Thus, the Executive Branch Code of Ethics and KDVA internal policies which address the acceptance of gifts by employees do not appear to address the issue at hand, which is the propriety of a veterans’ center resident including in his will the children of some of the employees of the veterans’ center.

As the Commission does not believe that the inclusion of an individual in a will is within the definition of “gift,” the Executive Branch Code of Ethics does not appear to specifically prohibit the employees or their dependent children from accepting an inheritance from a resident after his passing. However the Commission advises the KDVA to develop an internal policy addressing this issue as the Commission envisions potential personnel issues that may arise by allowing employees and their dependent children to be included in a resident’s will.

With the concerns that the KDVA has regarding the prevention of favoritism by employees and ensuring that all residents are cared for in a fair and impartial manner, the KDVA should consider the personnel issues that may result by certain employees being included in the will, as well as other employees not being included in the will, and adopt policies that will serve to avoid any employee conflicts or care issues.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: John A. Webb