

Executive Branch Ethics Commission
ADVISORY OPINION 09-19
May 21, 2009

RE: Does it constitute an ethics violation for a state employee to purchase a product from a state-contracted vendor at a lower than retail rate for their personal use?

DECISION: No, if the discount value does not exceed \$25 per person per year.

This opinion is issued in response to your April 17, 2009 request for an advisory opinion from the Executive Branch Ethics Commission (the “Commission”). The matter was reviewed by the Commission on May 21, 2009 and the following opinion is issued.

The Department of Juvenile Justice (DJJ) in the Justice Cabinet became aware of agency employees purchasing products for personal use from the agency’s contracted food vendor at the reduced state agency rate. The contracted price is much lower than retail or grocery store prices due to the voluminous amount of food purchased by the agency for use at its residential treatment facilities. The Commissioner of DJJ has directed all staff within the agency to immediately cease this practice.

The relevant statutes within the Executive Branch Code of Ethics (the “Code”) are KRS 11A.010(5) and KRS 11A.045(1).

KRS 11A.010 (5) provides:

“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.

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.

The first issue is whether the difference between the retail value of the food and the discounted price offered to DJJ employees is a “gift” for purposes of KRS Chapter 11A. In previous advisory opinions, the Commission has determined that vendor discounts that meet certain criteria are not treated as gifts. The Commission advised that vendor discounts offered to executive branch employees may be accepted and are not considered gifts if: (1) the discount is offered to all executive branch employees, (2) the discount is not limited to employees of a particular agency, and (3) the vendor offers a similar discount to employees of its other customers. See Advisory Opinions 01-1, 02-39, 04-38, and 07-37.

In this case, the discount is considered a gift because the vendor is offering the discount only to employees of DJJ and not to all executive branch employees. Accordingly, an employee of DJJ may only accept a total discount from the vendor in the aggregate amount of twenty-five dollars (\$25) per year. The amount of the discount for a calendar year is the total difference between the regular retail value of the food and the reduced cost for all food purchased by the employee during a calendar year.

Employees should purchase food for personal consumption directly from the vendor and not on the agency’s Pro Card, and state time and resources should not be used in the purchase of food by employees. The agency is not precluded by KRS Chapter 11A from issuing a more restrictive policy that would prohibit agency employees from purchasing food from the vendor at the contract rate.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Gwen R. Pinson

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