

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 93 – 45**

September 20, 1993

RE: State agency wishes to solicit donations from utility companies for poster contest.

This opinion is in response to your August 13, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 20, 1993, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. The Division of Energy within the Department for Natural Resources wishes to seek donations from gas and electric utilities to help defray some of the cost of its annual poster contest/calendar project. The Division of Energy has no enforcement authority over these utilities, but does offer policy direction in public service cases concerning the economic efficiency and environmental impact of electricity. The Department of Environmental Protection, which is under the same cabinet as the Department for Natural Resources, regulates air, water, and waste pollutants of the companies from which the Division of Energy proposes to request donations.

You would like an opinion on whether the Division of Energy's solicitation of donations from utility companies would be a violation of the Executive Branch Code of Ethics, whether the utility would be in violation of KRS 11A, and, if it is a violation for the division, what state officials would be in violation if the Cabinet solicited the funds.

KRS 11A.005(1)(a) states:

(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;

The receipt of donations by the Division of Energy from these utility companies and the fact that the Division of Energy offers policy direction in public service cases creates a conflict of interest in appearance, if not, in fact. Additionally, the Cabinet seeking these donations is the same Cabinet that has some control in regulating these companies. Although the Commission sympathizes with the Division of Energy relative to budget cuts, the Commission believes the appearance of a conflict of interest that is created prohibits the Division from approaching the utilities for donations.

In response to your second question, only executive branch employees are governed by KRS Chapter 11A. Therefore the utility would not be in violation, but may cause a

public official to be in violation if a donation is made. As for your third question, the Commission would need more specific information before giving an opinion, but in general we do not believe Division of Energy Officials should be soliciting funds from utilities.

The Commission recognizes the importance of this project. We urge the Division of Energy to turn this activity over to the private sector if public funds are not available.