

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 94-31

May 17, 1994

RE: May inspector accept charter flight from manufacturing company seeking approval?

DECISION: Yes

This opinion is in response to your April 25, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 17, 1994, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. A Kentucky manufacturing company wishes to buy a used boiler from a Georgia company. The Department of Housing, Buildings and Construction within the Public Protection and Regulation Cabinet must inspect and approve the boiler before it may be used in Kentucky. The manufacturing company has asked the Department to inspect the boiler in Georgia, before purchase, to ascertain whether the boiler will pass inspection.

Customarily, when the Department provides an out-of-state inspection, the company requesting the inspection is charged for the travel, meals, and lodging of the inspector, as well as a \$200 per day fee. The manufacturing company would like to charter a flight for the inspector in order to complete the inspection in one day, and thus, save an additional day's fee. You ask if this is allowed under KRS Chapter 11A.

KRS 11A.005 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.

(2) The principles of ethical behavior for public servants shall recognize that:

- (a) Those who hold positions of public trust, and members of their families, also have certain business and financial interests;
- (b) Those in government service are often involved in policy decisions that pose a potential conflict with some personal financial interest; and
- (c) Standards of ethical conduct for the executive branch of state government are needed to determine those conflicts of interest which are substantial and material or which, by the nature of the conflict of interest, tend to bring public servants into disrepute.

The Commission believes the state inspector traveling out-of-state on behalf of his department, at the request of the manufacturing company, may accept a charter flight from the company in lieu of traveling on a commercial flight and charging the company for his expenses.

The chartered flight should be accepted by the inspector only in the performance of his official duties and not for any personal benefit. The Department should prepare and send a statement for services to reflect a charge to the company for the transportation cost provided. The charge may be marked "paid" when sent to the company. This statement is necessary to ensure a proper paper trail and to document that the transportation cost provided was not a gift to the inspector. Under such circumstances, we do not consider the flight to be compensation to the inspector. Although the company is inspected by the Department, the inspector's acceptance of such a chartered flight is not a "gift" to the inspector or the Department, but is, in effect, payment for a service provided by the Department at the company's request.