

## ADVISORY OPINION 97-28

December 16, 1997

RE: May KET accept incentive items offered by videotape manufacturer?

DECISION: Yes, if part of the purchase agreement.

This opinion is in response to your November 18, 1997, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 16, 1997, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. Kentucky Educational Television ("KET") purchases thousands of dollars of videotape a year from several manufacturers. Occasionally, the videotape manufacturers offer special incentive programs to all their customers. This year, videotape manufacturer from which you periodically purchase tapes has offered an incentive program that issues certificates (credit) based on the percentage of videotape purchased within a certain time frame. The credit may be used against the cost of new equipment, technical training, technical bulletins, and maintenance agreements.

In addition, another manufacturer has offered a similar program based on the percentage of videotape purchased; however the gratuities offered are promotional items such as jackets, vests, pens, shirts, mugs and other items. These items appear to be more questionable as to whether they will be utilized by KET. You ask whether KET may accept the incentives offered through either of these programs.

KRS 11A.005(1)(a) and (d) provide:

(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;

...

(d) The public has confidence in the integrity of its government and public servants.

Advisory Opinion 94-30 issued by the Commission states that if a training opportunity offered because of the purchase of equipment was included on the vendor's bid for the equipment purchase, and thus was a part of the open competition for the state's business, the state agency may accept the training and lodging provided for the training. Similarly, if the credit you will earn as a result of purchases from either of the manufacturers is a part of the agreement for the purchase of videotape by KET, then KET may accept the credit and use it for needed items which the agency is seeking to further its goal.

If this credit was offered after KET's purchase of videotape from the manufacturer and was not part of your original agreement with the manufacturer, KET should not accept the credit for the additional items.

Furthermore, if the items offered by the manufacturer are not related to the mission or purpose of KET, the Commission does not believe KET should accept such items as part of its purchase agreement with the manufacturer. Although promotional items, up to a value of \$25, may be accepted by employees individually (see Advisory Opinion 94-63), KET should not accept a large volume of promotional items from a vendor. Such items would not be viewed as part of the open competition for the state's business because they are not related to the purchase of the tapes or the mission of KET. Additionally, KET should take great care not to reflect that it is promoting or advertising a specific company through the use of such items.

Enclosure: AO 94-39