

## ADVISORY OPINION 98-47

December 17, 1998

RE: May secretary for the Department of Mine and Minerals accept dinner and gifts from coal company by which her spouse is employed?

DECISION: Yes, within limitations.

This opinion is in response to your November 25, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 17, 1998, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. A secretary in a district office of the Department for Mines and Minerals (the "Department") is married to an employee of a coal company that is regulated by the Department. The secretary's spouse is not in management at the coal company. The coal company is having a Christmas Party at which dinner will be provided and gifts will be given to employees of the coal company and their spouses. You ask whether the secretary may attend the party, have dinner, and accept the gift.

Regarding the acceptance of gifts, KRS 11A.045 provides:

(1) No public servant, his spouse, or dependent child knowingly shall accept tangible gifts or gratuities with a value greater than twenty-five dollars (\$25) in a single calendar year, or travel expenses, meals, alcoholic beverages, lodging or honoraria of any value, 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. The following items are exempt:

(a) Coffee, soft drinks, pastries, hors d'oeuvres, or similar refreshments;

(b) Food consumed at a public event to which twenty-five (25) or more individuals are in attendance if that event is also open to participants other than public servants and members of the donor's industry;

(c) Meals, beverages and free admission to an event if the public servant, as a part of his official duty, is a speaker or has a significant role in the program;

(d) A campaign contribution to an employee's own campaign if in compliance with KRS Chapters 121 and 121A and all other campaign finance laws;

(e) A gift from a family member who is not acting as an intermediary for a person from whom the gift would be otherwise prohibited;

(f) Food, clothing and shelter in times of natural disaster or other emergency;

(g) Door prizes, if also open to persons other than public servants and members of the donor's industry and if all participants have an equal chance of receiving the prize;

(h) Gifts which are modest, reasonable, and customary, received on special occasions such as marriage or retirement;

(i) Awards of modest and reasonable value what are publicly received in recognition of public or charitable service, such as plaques;

(j) Prizes awarded based solely on skill, such as those received in golf or tennis tournaments, if those tournaments are open to participants other than public servants and members of the donor's industry;

(k) Meals at conferences or seminars which are included as part of the dues paid or registration fee and which are available to all attendees; and

(l) A single copy of a textbook received by an educator for review.

The provisions above prohibit both the secretary and her spouse from accepting gifts and gratuities from the coal company unless the gratuity is listed as an exception stated above.

The Commission believes that a Christmas dinner provided by a company for employees and their spouses is a reasonable and customary gift given on a special occasion. Thus, provided the dinner is reasonable in value, both the secretary and her spouse may accept the dinner provided by the coal company at the Christmas party. The Commission takes into consideration that neither the secretary, nor her spouse, is in a decision-making capacity in each of their respective positions.

Additionally, the secretary and her spouse may accept the gifts provided by the coal company as long as the gifts do not have a total value of greater than \$25.