

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 06-25

August 25, 2006

AUTHORIZATION FOR EXCEPTION TO KRS 11A.045(1)

EXCEPTION NO. 2006-1

RE: May the Department of Criminal Justice Training accept firearm training simulation machines from an association that represents cities?

DECISION: Yes.

This opinion is issued in response to your August 21, 2006, request for an Advisory Opinion from the Executive Branch Ethics Commission (“Commission”). This matter was reviewed at the August 25, 2006, meeting of the Commission and the following opinion is issued.

According to your request, the Department of Criminal Justice Training (the “Department”), within the Justice Cabinet, in accordance with its duties as established in KRS 15A.070, provides basic and in-service training for approximately 11,000 students each year, including city and county police officers, sheriffs, deputy sheriffs, university police, airport police, law enforcement telecommunicators, and coroners. Training is also provided for officers charged with water enforcement, motor vehicle enforcement, and alcoholic beverage control.

Training in the use of firearms is a primary component of law enforcement basic training and is the subject of many of the in-service training courses offered by the Department. Additionally, KRS 15.383 was enacted during the 2005 Regular Session of the General Assembly and requires all certified peace officers to annually qualify in marksmanship with a firearm.

An association of 400 Kentucky cities and municipalities that provides resources, advocacy, and assistance to its members, including liability insurance coverage for Kentucky cities and their police departments, recently purchased for the benefit of its members new Firearm Training Simulator (“FATS”) machines. Due to the purchase of new machines, the association no longer had need or space for two FATS machines it previously owned. As a part of its purchase, the old machines were to be traded to the manufacturer who provided the new

FATS machines. Subsequently, the association learned that the old FATS machines had little resale value and that the manufacturer planned to simply junk the old machines. Because of the nature of the Department's mission and past working relationship with the association, the association convinced the manufacturer to permit it to retain the old FATS machines in order to donate or sell (for \$1.00) to the Department. While the Department has firearms training simulation equipment, the FATS machines offered to it by the association are much newer and would be a great improvement for the officers that attend firearms training by the Department. You further note that the Department does not currently have the funds necessary to purchase new FATS machines.

While the Department does not regulate the association, it does have some regulatory enforcement authority over individual cities which the association primarily represents. Pursuant to KRS 15.450, the Justice Cabinet Secretary has delegated to the Department the responsibility for determining which local units of government are eligible to share in a monetary supplement for local law enforcement officers funded by the Kentucky Law Enforcement Foundation Program fund (the "fund"). The Department is authorized to withhold or terminate payments to any local unit that does not comply with the requirements of the fund. Such requirements include minimum educational requirements for potential officers, initial training for new officers, and annual continuing education and training for officers.

In the past, the Department also has entered into Memorandums of Agreement with the association for the provision of training and other services, but such agreements do not constitute a business relationship. The association has supported many of the new law enforcement training proposals made by the Department and the Kentucky Law Enforcement Council that were ultimately enacted into law. The Department and the association have not always agreed on changes to police training requirements, but regardless of any disagreement, the Department has always proceeded with its mission as established by KRS 15A.070 and its leadership. The association is not registered to lobby the Department and has never sought to influence the direction or actions of the Department.

KRS 11A.045(1) provides the following:

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.

It is your opinion that the association, whose membership is made up of Kentucky cities, has as its primary purpose the representation of cities which are regulated by the Department. For this reason, you request an exemption from the gift prohibition in KRS 11A.045(1), stated above.

In previously issued advisory opinions, the Commission concluded, based on the provisions of KRS 11A.045(1), that state agencies, like individual public servants, are prohibited from accepting gifts from persons or businesses doing business with, regulated by, or seeking to influence the actions of the state agency. The same would be true of any group or association which has as its primary purpose the representation of those persons or businesses. Based on the information you provided and the relevant statutes, the Commission agrees with your assessment that the Department has some regulatory authority over the member cities that the association represents. Thus, the only question that needs to be answered is whether the authorization of an exemption from the restrictions contained in KRS 11A.045(1) would create an appearance of impropriety.

The Commission has addressed similar requests before. In Advisory Opinion 05-30, the Commission granted an exception to allow the Kentucky Horse Racing Authority (“Authority”) to accept fingerprinting machines donated to it by professional organizations. While the Commission determined that the Authority did have a business relationship with one of the professional organizations, it was only because of the Authority’s membership in the professional organization. The Commission granted an exception because it was of the opinion that no actual conflict or appearance of impropriety would be created by a state agency’s acceptance of a donation from a professional organization when the only relationship between the agency and the organization or its members is created by payment of membership fees to a professional organization that is unique to the agency and serves the mission of the agency.

The situation you present differs from the Authority’s situation in that the Department regulates the cities and municipalities that the association represents. However, because the regulatory relationship the Department has is with individual cities, and not directly with the association, and because the association has no obvious incentive to attempt to influence the

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Department regarding the compliance of individual cities with the fund requirements, and thus no appearance of impropriety will be created, the Commission grants the request for an exemption to allow the Department to accept the FATS machines from the association.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb

Enclosures: KRS 15.410
KRS 15.440
KRS 15.450

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