

Executive Branch Ethics Commission  
**ADVISORY OPINION 11-08**  
December 2, 2011

**RE:** Does service by a mayor on the Kentucky Public Transportation Infrastructure Authority interfere with his ability to accept campaign contributions should he run for re-election while still serving as a member of the authority?

**DECISION:** No, due to the fact that campaign contributions are not considered “gifts” as that term is defined in the Executive Branch Code of Ethics.

This opinion is issued in response to your November 1, 2011, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). Your request was reviewed at the December 2, 2011, meeting of the Commission and the following opinion is issued.

You are a member of the Kentucky Public Transportation Infrastructure Authority (“KPTIA”). You were appointed to KPTIA in August 2011 by the Governor to fill out the remainder of an unexpired term, which will expire October 1, 2013. KPTIA is an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky constituting a governmental agency and instrumentality of the Commonwealth. Its purpose is to perform essential public and government functions that improve the public welfare and prosperity of the people of the Commonwealth by promoting the availability of and enhancing accessibility to improved transportation services within the Commonwealth. KPTIA is comprised of eleven voting members. Pursuant to KRS 175B.015(7)(a), the members of KPTIA are public servants subject to KRS Chapter 11A, the Executive Branch Code of Ethics (the “Code of Ethics”). Therefore, while you serve as a member of KPTIA, you must adhere to the requirements of the Code of Ethics just as every employee in the executive branch of state government must.

In your letter you indicate that you are the current mayor of Henderson, with three years remaining on your term. Should you choose to run for re-election, you are concerned that your service on KPTIA could impact your campaign fund-raising ability. In your previous campaign, you indicate that you received donations from individuals associated with contractor and architect firms. You state that those firms could possibly bid on state transportation contracts in the future. While you believe it is unlikely that any local firm would bid on any projects with which KPTIA would be involved, they could possibly be selected for smaller state project work.

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You ask whether your affiliation with KPTIA prohibits you from accepting campaign contributions from any person in your home county who might be associated with a firm or company that might do some sort of state transportation work in the future.

The general rule regarding the acceptance of “gifts” is contained in KRS 11A.045(1), which states as follows:

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.

Therefore, generally speaking, you would not be able to accept “gifts” from any person or business that, for example, has a contract to provide goods or services to your agency. However, the term “gift” is defined in the Code of Ethics at KRS 11A.010(5) as follows:

"Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; **"gift" does not include** gifts from family members, **campaign contributions**, or door prizes available to the public (emphasis added);

Since campaign contributions are not considered “gifts,” then you may accept campaign contributions from any source even while you serve as a member of KPTIA, at least as far as the Code of Ethics is concerned. The Commission previously reviewed a similar issue in Advisory Opinion 04-30, attached, in which the Commission considered whether campaign contributions were required to be reported by executive agency lobbyists as expenditures or financial transactions. The Commission concluded that they were not, due to the fact that while expenditures made to or on behalf of executive branch officials needed to be reported by lobbyists, including gifts of money, the definition of gift in KRS 11A.010(5) specifically excluded campaign contributions. Since campaign contributions were not considered to be gifts to executive branch officials, the campaigns of executive branch employees and officials were not prohibited by law from accepting campaign contributions from individuals registered as lobbyists and, therefore, the Commission concluded that they would not be considered expenditures that needed to be reported by a lobbyist.

Please be advised that while the Code of Ethics does not affect your ability to accept campaign contributions, this does not preempt the laws governing elections as administered by

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the Registry of Election Finance. Therefore the Commission recommends you seek guidance from that agency as well.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Chair: Ronald L. Green

Attachment: Advisory Opinion 04-30

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