



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
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Executive Branch Ethics Commission
ADVISORY OPINION 16-07
July 18, 2016

GIFTS EXCEPTION NO. 2016-3

RE: May the Office of the Secretary of State accept a donation of 120 refurbished Surface Pro Tablets from the Microsoft Corporation?

DECISION: Yes.

This opinion is issued in response to your June 29, 2016 request for an exemption to KRS 11A.045(1) from the Executive Branch Ethics Commission (the "Commission") on behalf of the Office of the Secretary of State ("SOS Office"). This matter was reviewed at the July 18, 2016 meeting of the Commission and the following opinion/exemption is issued.

You state the relevant facts as follows: The SOS Office regulates the conduct of elections for the Commonwealth. In 2010, the Commission reviewed the duties and responsibilities of the Secretary of State as it relates to the conduct of elections. See Advisory Opinion 10-01 attached. The SOS Office established the "Go Vote Kentucky" program in 2016, which is an online voter registration program created to encourage citizens to register to vote using the Commonwealth's new online voter registration portal. During the 2016 National Association of Secretaries of State Conference, the Secretary of State made a presentation concerning the Go Vote Kentucky program after which the Microsoft Corporation ("Microsoft") indicated its interest in donating 120 (one per county) refurbished Surface Pro tablets, valued at approximately \$115,080.00 to the SOS Office to be used in conjunction with the program. Microsoft is offering this donation through its community based outreach program with the mission of establishing support and to enhance civic engagement and participation.

You request for the Commission to issue a gift exemption on your agency's behalf to allow the SOS Office to accept this donation. You also state that it is your opinion that the grant of a gift exemption in this instance is appropriate because this donation would not create an

ADVISORY OPINION 16-07

July 18, 2016

2 | Page

appearance of impropriety and the donation would benefit the Commonwealth. You further state that some of the tablets would be used by the SOS Office and the remainder would be dispersed to the counties to be used by the county clerks' offices and local non-profit civic organizations throughout the state in conjunction with the voter outreach program.

KRS 11A.045(1) provides:

- (1) 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.

(emphasis added). KRS 11A.010 provides definitions for "business" and "person:"

- (1) "Business" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted, whether or not for profit;

- (20) "Person" means an individual, proprietorship, firm, partnership, limited partnership, joint venture, joint stock company, syndicate, business or statutory trust, donative trust, estate, company, corporation, limited liability company, association, club, committee, organization, or group of persons acting in concert.

"Regulated" is not defined by the Code, but typically means an entity over which the SOS Office may exercise some form of regulatory control, including, but not limited to licensing, certifying, investigating, or issuing citations, penalties or fines.

Based on the language above, ordinarily your agency would be prohibited from accepting gifts with a value of over \$25 from any person or business doing business with, regulated by, seeking grants from, involved in litigation against, or lobbying or attempting to influence the

ADVISORY OPINION 16-07

July 18, 2016

3 | Page

actions of your agency. The SOS Office and Microsoft do not have an existing business relationship. Furthermore, Microsoft is not seeking grants from, involved in litigation against, nor is it otherwise presently attempting to influence the SOS Office. However, Microsoft is registered as a business with the SOS Office in Kentucky and may be considered to be regulated by the SOS Office. Furthermore, Microsoft is a registered employer or Real Party in Interest of all agencies of the executive branch, which includes the SOS Office. Therefore, Microsoft would be a business from which the SOS Office would be prohibited from accepting a gift pursuant to KRS 11A.045(1).

Generally, the Commission has determined that an agency should not accept gifts from entities that could be current or potential vendors. See AO 10-03 and 10-06. You attest that there are no pending solicitations for a business relationship with the SOS Office from any businesses such as Microsoft nor are there any anticipated future purchases wherein this donation would provide an expectation of an advantage for Microsoft. Indeed the receipt of such a donation would be regulated by the Finance Cabinet and the Model Procurement Code could render null any such potential business relationship if such a donation were accepted.

Nevertheless, the Commission has granted exemptions to the gifts prohibition where such exemptions would not create an appearance of impropriety. See Gift Exceptions 2007-2, 2005-3, 2002-01, and 2002-01. You state that the donation will provide a greater good, service, and benefit to the people of the Commonwealth for use in the Go Vote Kentucky program.

As such, the Commission grants an exception, pursuant to KRS 11A.045(1), for the SOS Office to accept the donation from Microsoft for this one time limited purpose as long as the tablets are used only for the Go Vote Kentucky program.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: W. David Denton

Attachments: Advisory Opinion 10-01