



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
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Executive Branch Ethics Commission
ADVISORY OPINION 16-08
July 18, 2016

RE: May the Transportation Cabinet solicit sponsorships for its Safety Assistance for Freeway Emergencies (SAFE) Patrol and acknowledge the sponsor through placement of a plaque on its SAFE Patrol vehicles?

DECISION: Yes, provided that the Cabinet makes no effort to endorse or recognize the recipient of the sponsorship other than through a small plaque no larger than 12" x 18" and rejects sponsors from whom it cannot accept a gift pursuant to KRS 11A.045.

This opinion is issued in response to your June 24, 2016 request for an advisory opinion pursuant to KRS 11A.110(1) from the Executive Branch Ethics Commission (the "Commission") on behalf of the Transportation Cabinet. This matter was reviewed at the July 18, 2016 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows: The Transportation Cabinet ("Cabinet") operates the Safety Assistance for Freeway Emergencies ("SAFE") Patrol. SAFE Patrol is designed to assist motorists on Kentucky's major interstates and parkways. This program has been well received by stranded motorists and the Cabinet believes it offers a public benefit to the citizens and visitors of the Commonwealth. However, the extensive territory covered by this program and the long service hours make it expensive to maintain. For this reason, you would like to establish a SAFE Patrol sponsorship program to help offset the costs associated with this program. You estimate that such a sponsorship program would save the Cabinet approximately \$250,000 to \$500,000 per year.

In your request for an Advisory Opinion, you note that surrounding states (i.e. Indiana, Ohio, and North Carolina) have implemented similar sponsorship programs. Most notably, in Ohio, you say it is not uncommon to see state safety patrol vehicles branded with the logo of State Farm. You also provide guidance on sponsorship programs from the Federal Highway

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Administration which notes that an “acknowledgment plaque” on a state patrol vehicle can serve as appropriate recognition for a sponsor. You acknowledge that such a plaque would have to meet federal guidelines concerning size and dimension, but would be no larger than 12” by 18”.

Specifically, you are seeking an opinion from the Commission as to whether you may establish a sponsorship program for the Cabinet’s SAFE Patrol program, similar to neighboring states, that would allow private entities to bid on sponsorship of a “state area or areas” through the open bidding process found under KRS Chapter 45A. The highest bidder would be permitted to place its name or insignia on the state vehicle pursuant to the federal requirements, but the Cabinet would also place a disclaimer on the vehicle which states: “This does not constitute an endorsement by a state or governmental entity.”

KRS 11A.020(1)(d) provides:

(1) No public servant, by himself or through others, shall knowingly:

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Additionally 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

“Gift” is defined under KRS 11A.010(5) as:

5) "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

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include gifts from family members, campaign contributions, or door prizes available to the public;

It has been the Commission's long standing interpretation of 11A.045(1) that a state agency is also precluded from accepting gifts totaling more than twenty-five dollars (\$25) from any business which is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency.

200 KAR 5:080 provides in relevant part:

(5) A sponsorship shall not constitute an "official endorsement" of a particular company by the Commonwealth of Kentucky as the sole vendor of choice.

(6) An entity that has a business or regulatory relationship with the agency, or who may be lobbying or attempting to influence matters of that agency, may be considered for a sponsorship opportunity only if there is a clear benefit to the commonwealth, or the sponsorship promotes economic development or tourism in the commonwealth.

According to 11A.020(1)(d) it would be impermissible for you to endorse or publicly promote any sponsor of your SAFE Patrol program. However, the Commission has previously held in Advisory Opinion 02-33, see attached, that acknowledgement of a sponsor through a plaque or marker recognizing their sponsorship does not rise to the level of endorsement. Similarly, in Advisory Opinion 07-27, see attached, the Commission held that a state agency could print the logos of sponsors on the back of a t-shirt. However, the Commission also noted that the agency should take care not to actively endorse or acknowledge the sponsors through any public statement.

Therefore, in light of its previous advice, the Commission believes you would be able to recognize sponsors through small plaques which measure no larger than 12" x 18" and include a statement that "this does not constitute an endorsement by a state or governmental entity." Recognition by the Cabinet will not constitute an endorsement, so long as you do not publicly recognize any sponsors and the only acknowledgement they receive is through a plaque.

Additionally, 11A.045(1) would prevent you from seeking sponsorships from persons or business that are regulated by, doing business with, in litigation with, lobbying, or otherwise seeking to influence the Cabinet. In Advisory Opinion 02-21, the Commission stated that a state agency is not prohibited from soliciting corporate donations for state-sponsored programs,

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provided the entities solicited have no business or regulatory relationship with the agency and provided the entities are not lobbying or seeking to influence matters of the state agency.

Yet, because you seek to recruit sponsors through an open bidding process under KRS Chapter 45A, it would seem that the Cabinet would be allowed to consider sponsors that have “a business or regulatory relationship with the agency, or who may be lobbying or attempting to influence matters of that agency, may be considered for a sponsorship opportunity only if there is a clear benefit to the commonwealth, or the sponsorship promotes economic development or tourism in the commonwealth.” 200 KAR 5:080. Nevertheless, 200 KAR 5:080 was not promulgated under the Commission’s authority and a regulation shall not “modify or vitiate a statute or its intent.” KRS 13A.120(2)(i). Therefore, it is the opinion of the Commission that the Cabinet should reject sponsors with whom the Cabinet has a business or regulatory relationship or who are seeking to influence decisions of the Cabinet in compliance with KRS 11A.045, in order to avoid the appearance of impropriety.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: W. David Denton

Attachments: Advisory Opinion 02-21
Advisory Opinion 02-33
Advisory Opinion 07-27