

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

EXCEPTION NO. 2002-02

May 8, 2002

RE: May Cabinet accept mail-testing equipment from corporation with which it does business?

DECISION: Yes, with a proviso.

This authorization is in response to your May 7, 2002, request for an exception to KRS 11A.045(1) from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 8, 2002, meeting of the Commission and the following authorization is issued.

You state the relevant facts as follows. A major corporation has approached the Finance and Administration Cabinet (the "Cabinet") about the possibility of using the Cabinet's Division of Postal Services ("Postal Services") as a beta test site for a system designed to screen mail for biohazardous material. In exchange for the ability to test their equipment, the corporation has offered to give the Cabinet the testing system.

The BioMail Solutions Detection System that would be given to the Cabinet filters, tests, and analyzes many micron-sized airborne particles that could be harmful to personnel in mailrooms. The system provides for detection and analysis at multiple points in the mail processing system, including outgoing and incoming mail. The system includes a mail transport and sortation subsystem; a ventilation and filtration subsystem; real-time detection and particulate analysis; personal sampling devices that are wearable, or that can be mounted near equipment; and a ventilated workstation where mail that needs to be prescreened can be opened.

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Employees in Postal Services estimate that they handle approximately 25 million outgoing pieces of mail and 18 million incoming pieces of mail annually. Postal Services provides service to virtually every executive branch state agency, as well as to the legislative and judicial branches of state government.

To gain maximum protection from the system, the equipment that would test incoming mail would be located at the Frankfort mail post office, and operated by Postal Services personnel. This would prevent incoming contaminated mail from entering any state government buildings. The outgoing mail testing equipment would be located in the Postal Services' main postal facility, thus preventing outgoing mail that might be contaminated from entering the general delivery system.

The corporation that wishes to test its system and donate the equipment to the Cabinet currently holds one contract with the Cabinet for postal equipment. However, you do not believe that the corporation does any other business with the Cabinet. Furthermore, the equipment that will be donated to the Cabinet currently is available only from this particular company. You ask if the Commission can grant an exception, pursuant to KRS 11A.045(1), to permit the Cabinet to accept the protective equipment from the corporation. You believe that this gift would benefit the entire Commonwealth.

In considering your request, the Commission reviewed KRS 11A.045(1) that 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

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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.

Employees are prohibited from accepting gifts and gratuities from any person or business that does business with the state agency for which the employee works. Additionally, in previously issued advisory opinions, the Commission stated that an agency's acceptance of gratuities from an entity seeking to do business with the agency would create a conflict of interest for the agency and would tend to damage public confidence in the integrity of government. Accordingly, the Cabinet would be precluded from accepting the testing equipment from the corporation.

However, the Commission believes in this case that, although the Cabinet does business with the corporation, the Cabinet may accept the testing equipment from the corporation with the expectation that no advantage be allowed by the Finance and Administration Cabinet now or in the future with regard to bidding on this type of equipment, and maintenance of equipment or related mail processing equipment, and on the basis that it provides a substantive security benefit to the people of the Commonwealth.

Thus, the Commission authorizes an exception to allow the Cabinet to accept the testing system equipment from the corporation. The Commission does not believe that the exemption will create an appearance of impropriety if the above guidelines are followed.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.

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