

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

EXCEPTION NO. 2002-03

June 28, 2002

RE: May the State Fire Marshal's Office accept free training and code Materials from the NFPA?

DECISION: Yes.

This authorization is in response to your May 31, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 28, 2002 meeting of the Commission and the following authorization is issued.

You state the relevant facts as follows. The National Fire Protection Association ("NFPA") is a non-profit organization that publishes consensus fire and life safety codes that are used nationally and internationally. The Department of Housing, Buildings and Construction, Division of Fire Prevention (the Department"), adopts NFPA codes that are required by Kentucky Administrative Regulations (815 KAR, Chapter 10), "Kentucky Standards for Safety." When a state adopts the NFPA's major codes and standards by regulation or legislation, the NFPA provides training to authorities having jurisdiction (AHJs) and complimentary copies of the major codes adopted (in Kentucky NFPA 1, 54, 58, and 101). Training sessions are typically two- to three-day seminars given at three different locations throughout the state. The complimentary training code program is intended to: (1) ensure that AHJs using NFPA codes and standards are properly trained to enforce the documents; and (2) ensure that state and local enforcement personnel have access to state-of-the-art codes, regardless of their financial resources.

The only other source for fire codes of which you are aware is the Building Official and Code Administrators ("BOCA") which produces the International Fire Code (IFC). Staff has informed you that in the past BOCA, from which Kentucky has adopted its building code, provided the Department with complimentary copies

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of its codes. When adopting codes for fire officials to use in the Kentucky Standards of Safety (815 KAR, Chapter 10), the Fire Marshal changed from BOCA-IFC to NPFA several years ago because the BOCA-IFC had to be supplemented extensively and the NPFA already contained such additional codes. For example, the BOCA-IFC does not contain life safety provisions and does not cover nursing homes or hospitals.

You ask whether the State Fire Marshal's Office, which operates under the Department may accept free training and code materials from the NFPA.

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.

It is the Commission's understanding that once a state adopts a code as mandatory, the organization responsible for the development of that code benefits from the sale of specific code books. Although the Commission acknowledges that state regulations require the adoption of certain fire codes, and thus no decisions are being made as to the adoption of those codes, it appears that other fire codes are adopted for which there is competition from BOCA.

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Thus, although the Commission believes that Department employees may accept free training from the NFPA, provided others attending the training are not charged a fee (See Advisory Opinion 00-63), the law does not allow the Department to accept free code books from the NFPA if the value of the books exceeds \$25, unless an appearance of impropriety does not exist and the Commission grants an exception for the gift. The Commission believes that in this situation the acceptance of the code books by the Department from the NFPA would not create an appearance of impropriety and grants an exception for the Department to accept the code books during the code training program.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.

Enclosure: Advisory Opinion 00-63

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