



COMMISSION MEMBERS

ANGELA LOGAN EDWARDS, CHAIR  
W. DAVID DENTON, VICE CHAIR  
WILLIAM L. KNOPF  
WILLIAM G. FRANCIS  
LEWIS G. PAISLEY

EXECUTIVE BRANCH ETHICS COMMISSION  
FOUNTAIN PLACE SHOPS #3 FOUNTAIN PLACE  
FRANKFORT, KY 40601  
502-564-7954 FAX 502-564-2686

JOHN R. STEFFEN  
EXECUTIVE DIRECTOR

KATHRYN H. GABHART  
GENERAL COUNSEL

Executive Branch Ethics Commission  
**ADVISORY OPINION 12-06**  
September 24, 2012

- RE:**
1. May an agency accept financial assistance in the form of reimbursement for the cost of its employees to attend and conduct training sessions and to attend state and national conferences from an organization that is not regulated by or doing business with the agency in question?
  2. May an agency accept financial assistance to cover the cost of incidental expenses (brochures, banners, and training materials) necessary to conduct quarterly conferences from an organization that is not regulated by or doing business with the agency in question?
- DECISION:**
1. Yes, under certain conditions.
  2. Yes, under certain conditions.

This opinion is issued in response to the Kentucky Heritage Council's ("KHC") June 27, 2012, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). The request was reviewed at the September 24, 2012, meeting of the Commission and the following opinion is issued.

The relevant facts, as provided by KHC, are as follows. KHC is a state agency created pursuant to KRS 171.381. In addition to a Council whose membership is appointed by the Governor, KHC includes, pursuant to KRS 171.3801(7), ". . . a heritage division, whose duties shall include providing staff services needed by the Heritage Council in order to perform its duties under KRS 171.381. . . ." The heritage division is considered a state agency and a political subdivision of the Commonwealth of Kentucky attached to the Tourism, Arts and Heritage Cabinet, and its employees are considered state employees. Contained within KHC is the Kentucky Main Street Program, a partnership between national, state, and local governments dedicated to the economic revitalization and preservation of historic downtowns. Currently there are 80 Kentucky Main Street communities throughout the state. Main Street City programs can be local government agencies, quasi-governmental agencies, or independent non-profit organizations. KHC determines whether a community is eligible for Kentucky Main Street status.

Status as a Main Street City entitles the community to educational, promotional, and training assistance from KHC. In addition, KHC is a member of Renaissance Alliance, a multi-agency program that serves as an advisory committee to the Kentucky Renaissance program. The Renaissance program provides incentives including grants to revitalize businesses in Main Street communities. Certification by KHC determines a Kentucky Main Street city's eligibility for participation in Renaissance programs.

The Friends of Main Street, a charitable non-profit organization currently seeking tax exemption status pursuant to Section 501(c)(3) of the Internal Revenue Code, was organized to assist in the promotion of the Main Street program on a state-wide basis and to encourage more participation in the program. Funding for Friends of Main Street comes from a wide variety of sources including non-profit groups, private individuals, corporate sponsors, Main Street City programs, and any other sources available, but not grants or funding from KHC. The Friends of Main Street is not regulated by nor does it do business with KHC. The membership of The Friends of Main Street consists of individuals, and not the Main Street Cities themselves.

The Friends of Main Street has offered to provide financial assistance to KHC staff to attend and conduct training sessions and to attend state and national conferences by reimbursing staff for cost of tuition, meals and travel expenses. The Friends of Main Street has also offered to provide financial assistance to KHC staff by reimbursing staff for the cost of incidental expenses (brochures, banners, and training materials) necessary to conduct quarterly Main Street conferences. Funds for these expenses may come from a pool of funds, which may contain donations from Main Street City programs that have been co-mingled with other sources of donations. For example, a Main Street City program may have excess funds left over from registration fees charged for hosting quarterly conferences which it desires to donate to the Friends of Main Street. Those registration fees may be paid by private individuals as well as other Main Street City programs.

KHC asks for the Commission's opinion as to:

- 1) Whether The Friends of Main Street may provide financial assistance to KHC staff to attend training sessions and to attend state and national conferences by reimbursing staff for cost of tuition, meals and travel expenses?
- 2) Whether The Friends of Main Street may provide financial assistance to KHC staff to conduct training sessions by reimbursing staff for cost of tuition, meals and travel expenses?
- 3) If so, whether there are any restrictions placed upon the staff for acceptance of these funds; for instance, will they be required to take their own time?

- 4) Whether The Friends of Main Street may provide financial assistance to KHC staff by reimbursing staff for incidental expenses expended with respect to quarterly Main Street conferences?

According to KRS 11A.045(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.

KRS 11A.010(5) further provides:

"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;

While KRS 11A.010(14) states:

"Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;

The Commission's long-standing interpretation of KRS 11A.045(1) prohibits state agencies (in addition to state employees) from accepting gifts, as defined above, from persons or businesses they regulate or with which they do business. See, for example, Advisory Opinion 02-2, in which the Commission concluded that an agency should not accept donations of items and services from persons or businesses that were seeking to do business with that agency. The Commission has also previously addressed issues pertaining specifically to the acceptance of travel expenses. For example, in Advisory Opinion 05-27, the Commission, referencing multiple advisory opinions, reiterated that KRS Chapter 11A, the Executive Branch Code of Ethics, did not prohibit employees from accepting travel expense reimbursement from a professional association or organization, provided the agency for which the employee worked did not do business with nor regulate the association or organization or the members of the association or organization.

**ADVISORY OPINION 12-06**

September 24, 2012

Page four

The information provided indicates that The Friends of Main Street is not doing business with or regulated by KHC. Based on this assertion and finding it reasonable to view The Friends of Main Street in a manner similar to that of a professional association or organization, there would be no issue with The Friends of Main Street providing financial assistance for KHC staff to attend training sessions or state and national conferences by reimbursing KHC directly for the cost of its staff's tuition, meals, and travel expenses incurred as a result of such official travel. To be clear, when the staff of KHC are traveling to these events as part of their official duties, and KHC is thus obligated to pay for the appropriate costs associated therewith as delineated in 200 KAR 2:006, the state travel regulation, it would be permissible for KHC to accept reimbursement of those costs from The Friends of Main Street. Likewise, The Friends of Main Street may provide financial assistance for KHC staff to conduct training sessions by reimbursing KHC for the cost of its staff's tuition, meals, and travel expenses when such training sessions are conducted as part of the staff's official duties.

Regarding whether any restrictions would be placed upon KHC staff for acceptance of these funds (for instance, would they be required to take their own time), if attending these training sessions or state and national conferences, or conducting training sessions, is part of an employee's official duties, then the employee should be conducting such activities on state time, with KHC, not the staff, accepting reimbursement from The Friends of Main Street for the expenses associated with doing so. KRS 11A.040(5) states that "[a] public servant shall not knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission." Taking this a step further, it is the Commission's opinion that if these activities are within the scope of KHC staff's official duties, then it would be inappropriate for a member of the staff to take time off in order to accept additional compensation for conducting such activities. See Advisory Opinions 04-22 and 02-59, attached, for additional guidance.

The same would be true in regard to your final question. KHC staff, if performing their official duties, may not be reimbursed personally by The Friends of Main Street for incidental expenses expended with respect to quarterly Main Street conferences. But if the expenses are an appropriate use of state funds, then KHC may accept reimbursement from The Friends of Main Street. Again, this is based on the understanding that The Friends of Main Street is not regulated by or doing business with KHC.

If or when KHC accepts the reimbursement of expenses of any kind from The Friends of Main Street, it is in effect entering into a "partnership" with that organization. The Commission has determined that an agency may enter into such an agreement with a private entity in a program that will benefit the entire Commonwealth, or will promote economic development or tourism in the state, but that an agency may not "endorse" a private company by publicly and actively promoting one private company over another. Since the Kentucky Main Street Program as a whole is dedicated to economic revitalization and the preservation of historic downtowns across the state, there is nothing inappropriate with KHC accepting assistance from The Friends of Main Street to

Executive Branch Ethics Commission

**ADVISORY OPINION 12-06**

September 24, 2012

Page five

further this goal. While there probably is not an organization similar to The Friends of Main Street, should any such organization exist, KHC should take care not to promote The Friends of Main Street over any other such organization and must provide any similar organization with the same partnership opportunities as The Friends of Main Street. See Advisory Opinion 11-07.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

---

By Chair: Angela Logan Edwards

Attachments: Advisory Opinion 02-59  
Advisory Opinion 04-22

This document was created with Win2PDF available at <http://www.win2pdf.com>.  
The unregistered version of Win2PDF is for evaluation or non-commercial use only.  
This page will not be added after purchasing Win2PDF.