



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
<http://ethics.ky.gov/>

W. DAVID DENTON
CHAIR

WILLIAM G. FRANCIS
VICE CHAIR

RICHARD L. MASTERS
JUSTICE MARTIN E. JOHNSTONE (RET.)
JUDGE SHEILA R. ISAAC (RET.)

KATHRYN H. GABHART
EXECUTIVE DIRECTOR

MISTY DUGGER JUDY
GENERAL COUNSEL

#3 FOUNTAIN PLACE
FRANKFORT, KY 40601
(502) 564-7954
FAX: (502)-564-2686

Executive Branch Ethics Commission
ADVISORY OPINION 16-02
April 19, 2016

GIFTS EXCEPTION NO. 2016-2

RE: May a public servant accept a customary gift provided through Leadership Kentucky from another participant who provided the gift to all participants of the event even though the other participant is a representative of an entity that is regulated by the public servant's agency?

DECISION: Yes.

This opinion is issued in response to your February 2, 2016 request for an exemption to KRS 11A.045(1) from the Executive Branch Ethics Commission (the "Commission") on your own behalf. This matter was reviewed at the April 19, 2016 meeting of the Commission and the following opinion/exemption is issued.

You state the relevant facts as follows: You are the Associate Vice President of Academic Affairs for the Kentucky Council on Postsecondary Education ("Counsel"). Pursuant to KRS 164.020, the Counsel regulates and does business with all state colleges and universities. In 2015, you participated in Leadership Kentucky, a seven-month program that brings together a selected group of people with a broad variety of leadership abilities, career accomplishments, and volunteer activities to gain insight into complex social and economic issues facing the state. Through a series of two-day sessions, held in various locations in the state, participants were educated about the state of Kentucky and its challenges. The participants met with Kentucky's current leaders and, through a systematic educational program, explored the state's opportunities, needs and resources.

Customarily, a class gift exchange occurs between participants at the final session of the program. Participants usually provide gifts related to their profession, business, or interests. As part of the gift exchange in December of 2015, an employee of Eastern Kentucky University (EKU), a participant in Leadership Kentucky, provided the other participants with a voucher for two tickets to any show in the 2015-16 season at the EKU Center for the Arts. The tickets have a face value of \$49.00 each.

ADVISORY OPINION 16-02

April 19, 2016

2 | Page

You request for the Commission to issue a gift exemption on your behalf to allow you to accept the gift. You also state that it is your opinion that the grant of a gift exemption in this instance is appropriate because this was a customary gift and would not create an appearance of impropriety for you to accept it.

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.

The Commission has previously opined, in the context of applying the outside employment and post-employment, provisions that a public college or university is not considered a “person” or “business.” See Advisory Opinions 02-60 and 00-54. Therefore, for the purposes of the gift rules, it would also hold true that a public college or university is not a person or business as contemplated by KRS 11A.045.

ADVISORY OPINION 16-02

April 19, 2016

3 | Page

Based on the language above, ordinarily you 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 actions of the Counsel. Yet, a public college or university, such as ECU, would not appear to be a person or business from which you would be prohibited from accepting a gift pursuant to KRS 11A.045(1).

Nonetheless, all public servants must be mindful of following the guidance established in KRS 11A.030 for avoiding conflicts of interest. KRS 11A.030 provides:

In determining whether to abstain from action on an official decision because of a possible conflict of interest, a public servant should consider the following guidelines:

- (1) Whether a substantial threat to his independence of judgment has been created by his personal or private interest;
- (2) The effect of his participation on public confidence in the integrity of the executive branch;
- (3) Whether his participation is likely to have any significant effect on the disposition of the matter;
- (4) The need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the executive branch; or
- (5) Whether the official decision will affect him in a manner differently from the public or will affect him as a member of a business, profession, occupation, or group to no greater extent generally than other members of such business, profession, occupation, or group. A public servant may request an advisory opinion from the Executive Branch Ethics Commission in accordance with the commission's rules of procedure.

Thus, you should generally avoid accepting gifts from public colleges and universities the Counsel regulates to avoid creating an appearance of impropriety.

Nevertheless, the Commission grants an exception, pursuant to KRS 11A.045(1), for you to accept gifts from Leadership Lexington participants, without having to pay the face value for the gifts because this was a customary gift exchange.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: W. David Denton

Executive Branch Ethics Commission

ADVISORY OPINION 16-02

April 19, 2016

Attachments: Advisory Opinion 02-60
Advisory Opinion 00-54