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

GWEN R. PINSON
CHAIR

RONALD L. GREEN
VICE CHAIR

JEANIE OWEN MILLER

ANGELA EDWARDS

J. QUENTIN WESLEY

JOHN R. STEFFEN
EXECUTIVE DIRECTOR

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

DANA C. NICKLES
GENERAL COUNSEL

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 08-25
September 26, 2008

RE: Request for a Gift Exception.

DECISION: Denied.

This advisory opinion is issued in response to a request from the Cabinet for Economic Development for a gift exception for private sector board members of the Bluegrass State Skills Corporation. The Commission considered this request at its September 26, 2008 meeting and the following opinion is issued.

The Cabinet states that the Bluegrass State Skills Corporation ("BSSC") Board members come from both the public and private sector. The blanket exception requested would cover only those private sector employees, appointed by the governor, who, because of ordinary business practices in the private sector are likely to "inadvertently" violate the gift provisions of KRS Chapter 11A. The Cabinet asserts in defense of its request that because of their limited role with the Cabinet, the Board members are not aware of all the companies with which the cabinet does business or to which the Kentucky Economic Development Finance Authority, also a part of the cabinet, awards incentives.

The Cabinet further states that including the BSSC private sector Board members within the ambit of KRS Chapter 11A's gift provisions will have a chilling effect upon the governor's ability to attract highly qualified private sector members.

The Commission determined in a previous advisory opinion that members of the BSSC Board who were not state employees, were not subject to the provisions of KRS Chapter 11A because they were not public servants under the act. However, on May 27, 2008, Executive Order 2008-454 was issued by the Governor which made all members of policy making and regulatory boards and commissions subject to the gift provisions of KRS 11A.045. The Executive Order's purpose is to ensure that a public official or employee shall not use public office to obtain private benefits and to promote public confidence in the integrity of government and public officials. BSSC is specifically included in its provisions.

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.

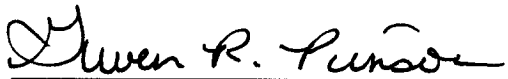
In deciding whether to grant an exception, the Commission must consider whether acceptance of the gift creates an appearance of impropriety. Those exceptions are granted on a case by case basis. In this case, however, the Commission is being asked to grant an exception without knowing any of the circumstances surrounding the giving of the gift. In essence, the exception is not being requested for a particular person, event, or gift, but a whole class of people. Neither KRS Chapter 11A nor the Executive Order permit the Commission to exempt an entire group of people from operation of the statute.

Granting this type of exception would not eliminate the appearance of impropriety. Giving certain Board members a blanket exception to accept any kind of gift from any source without oversight and without any thought to whether the gift provisions apply, totally thwarts the intent of the Executive Order, and therefore the Ethics Code. Any "inadvertent" violation of the gift provisions of the code should be reported, investigated and dealt with in the normal course. Any private sector Board member concerned with possible civil penalties and embarrassment for themselves and their companies need only check with the Cabinet or the Commission to avoid such repercussions before the gift is accepted.

The request for a gift exception is denied.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: Gwen R. Pinson