COMMONWEALTH OF KENTUCKY

EXECUTIVE BRANCH ETHICS COMMISSION

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EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 09-1

January 23, 2009

RE:

1. Does an employee's participation as a volunteer for the Commerce Lexington's Winner's Circle Program create a conflict of interest?

2. May the employee accept compensation and other rewards provided by the Lexington Chamber for her volunteer services?

DECISION:

1. No, as long as the employee's volunteer activities do not involve soliciting businesses or chamber members that are doing business with her agency.

2. Yes.

This opinion is issued in response to your employer's November 21, 2008, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the January 23, 2009, meeting of the Commission and the following opinion is issued.

The following relevant facts were provided. You are currently employed by the Finance and Administration Cabinet as a Director. Prior to your employment, you volunteered with Commerce Lexington on behalf of your former employer. You participated in Commerce Lexington's Resource Development Program, which is also known as "Winner's Circle." Winner's Circle is the chamber's annual campaign to help finance both new and existing programs. It is a strictly volunteer program that involves selling memberships, sponsorships, and budget reduction items to businesses in the Lexington, Kentucky area. In return, the participating volunteers are eligible to receive compensation and rewards such as trips and meals for their efforts.

Your specific duties as a volunteer would include recruiting new companies to participate in the Winner's Circle campaign as well as acting as a liaison to companies

that are already involved and encouraging them to increase their participation in the annual campaign. You propose to continue your volunteer duties on your own time. Specifically, you would like the Commission to address whether you can accept any rewards for your prior efforts as a volunteer or for any future efforts.

KRS 11A.020(1)(a) provides:

(1) No public servant, by himself or through others, shall knowingly:

(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

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(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

The Commission has addressed volunteer activities by Executive Branch employees in several prior opinions. In Advisory Opinion 95-43 we held that an employee's participation as executive director of a non profit educational organization did not create a conflict of interest as long as the non profit corporation had no business relationship with the employee's cabinet. In Advisory Opinion 02-42 we held that a public servant could solicit funds from businesses on behalf of a non-profit association as long as the businesses did not do business with and were not regulated by the employee's agency.

From the information provided, the Commission sees no apparent conflict of interest with your participation in Commerce Lexington's Winner's Circle annual campaign. However, given the large number of businesses affiliated with Commerce Lexington, it is difficult to state with any certainty that no ethical issues would ever be present. If your volunteer activities involve solicitation of or involvement with businesses that do business with the Finance Cabinet, then the volunteer activity could present a substantial conflict between your public and private interests. You should make certain that any solicitation that occurs on behalf of Commerce Lexington does not involve an entity that does business with the Finance and Administration Cabinet. If you become aware in the course of your present employment, that you are to be involved in a decision that affects an entity that you solicited in your volunteer capacity, you should

abstain from any action with respect to that entity.

There also appears to be no apparent conflict of interest if you accept compensation and rewards consisting of meals, beverages, or trips, since those are provided by Commerce Lexington and are awarded based solely on the volunteer's performance in meeting the Winner's Circle Program objectives.

You should make a clear distinction between your duties in the public interest and duties in your private endeavors. As such, no state time, property, equipment, or supplies should be used to pursue your volunteer activities. In addition, you should refrain from any involvement in any decision in your state job that may affect your private interests.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

Gwen R. Pinson

By Chair: Gwen R. Pinson