COMMONWEALTH OF KENTUCKY

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Executive Branch Ethics Commission
ADVISORY OPINION 09-12
March 27, 2009

RE: Does KRS Chapter 11A prohibit the Kentucky Board of Speech-Language Pathology and Audiology from contributing funds to state associations related to the professions regulated by the Board so that the associations may fund speakers at events for which continuing legal education credits are given?

DECISION: No, with limitations.

This opinion is issued in response to your February 20, 2009 request for an advisory opinion from the Executive Branch Ethics Commission ("Commission"). The matter was reviewed at the March 27, 2009 meeting of the Commission and the following opinion is issued.

You seek advice from the Commission regarding whether the Kentucky Board of Speech-Language Pathology and Audiology ("Board") may donate public funds to private associations. You state that it has been the practice of the Board in years past to contribute funds to such associations so that the associations may fund speakers at events for which continuing education credits are given. The rationale for the payments has been that continuing education is statutorily required under KRS 334A, and providing funding to the associations has been a way to subsidize professionals regulated by the Board to obtain the requisite credit. The Commission has been advised that some members of the Board also serve in leadership roles in the associations to which these payments are typically made.

The purpose of the Board, according to KRS 334A.010, "...is to safeguard the public health, safety, and welfare, and to protect the pubic from being misled by incompetent, unscrupulous, and unauthorized persons, and to protect the public from unprofessional conduct by qualified speech-language pathologists and audiologists." The Board regulates speech language pathologists, speech-language pathology assistants, and audiologists through licensing requirements, training requirements, and the enforcement of a code of conduct. 201 KAR 17:090 Section 2 requires each person licensed by the Board to complete mandatory training.

KRS Chapter 11A applies to pubic servants and members of the Board are not public servants as that term is defined in KRS 11A.010(9). However, members of the Board are subject to Executive Order 2008-454. Paragraph seven (7) of Executive Order 2008-454 provides:

(7) A state policy-making or regulatory board or commission member shall disclose to the other members of the board, commission, authority, council or committee of which he or she is a member, any direct or indirect interest in any undertaking that puts the member's personal interest in conflict with that of the agency. This disclosure shall be made in writing or shall be recorded in the minutes of a formal meeting. A member who is required to publicly disclose a direct or indirect interest shall abstain from all decisions concerning his or her interest if the decision should affect him or her as a member of a business, profession, occupation, or group in a manner different from other members of the business, profession, occupation, or group.

The Commission previously advised in Advisory Opinion 08-16 that a member of a regulatory Board who also serves in a leadership role in a professional association consisting of individuals regulated by the Board would have a conflict of interest requiring abstention every time the Board considers a matter affecting the professional organization or the regulation of its members. An individual serving on the Kentucky Board of Speech-Language Pathology and Audiology who also holds a leadership role in a related professional association has a conflict of interest precluding him or her from participating in discussions and decisions regarding the contribution of funds to that professional association. However, other members of the Board who are not serving in a leadership role within the professional association seeking financial assistance may participate in such discussions and decisions.

This opinion is limited to the legal implications of KRS Chapter 11A and Executive Order 2008-454, and does not address whether there are any other statutes or regulations that may prohibit the Board from contributing public funds to private associations.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

Gwen R. Pinson

By Chair: Gwen R. Pinson