COMMONWEALTH OF KENTUCKY

EXECUTIVE BRANCH ETHICS COMMISSION

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Executive Branch Ethics Commission
ADVISORY OPINION 09-2
January 23, 2009

RE: May Kentucky Housing Corporation ("KHC") solicit contributions and grants from entities it does business with to fund the Kentucky Housing Corporation's Homeownership Program ("KHPC")?

DECISION: Yes.

This opinion is issued in response to your October 7, 2008 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). The matter was reviewed at the November 14, 2008 and January 23, 2009 meetings of the Commission and the following opinion is issued. You seek advice from the Commission regarding whether KRS 198.400(4) authorizes KHPC to solicit contributions and grants from entities that have a business relationship with KHC in order to fund the activities of KHPC.

KHC was created by the Legislature in 1972 to provide safe and decent housing to Kentuckians. KHC's services include providing low interest loan programs for Kentuckians with certain income levels. In order to provide the low interest loans to Kentuckians, lenders that meet specific objective criteria may offer loans funded through KHC. The loans are assigned to KHC for servicing in exchange for a fee paid by KHC to the lenders. All loan decisions are made strictly upon the borrowers' credentials and not on who the originating lenders are. All KHC mortgage funds are available 24/7 on a first come first served basis via KHC's web site.

In 2008, the Legislature recognized a foreclosure crisis in Kentucky and established the KHPC as a subsidiary of KHC in order to provide information and assistance to homeowners facing foreclosure. KHPC coordinates services offered by nonprofit entities throughout the state including legal assistance and foreclosure intervention counseling. A person who contacts KHPC is directed to the appropriate nonprofit entity for the stage of foreclosure applicable to the person's situation and the geographic location of the individual's residence.

It is necessary for KHPC to give money to the nonprofit agencies that serve individuals requiring assistance. The Kentucky Legislature did not appropriate funds for KHPC. However, KRS 198.400(4) provides, "KHPC may solicit contributions and grants from the private sector, chapter." KHC has redirected a portion of its funds to operate KHPC, and KHC has obtained limited federal grant money for KHPC. However, the demand for services from KHPC requires additional funding.

KHC presented testimony at the Commission meeting on November 14, 2008 that prior to enacting KRS 198.400, the Legislature considered the provisions of KRS Chapter 11A, was aware that KHC has business relationships with lending institutions, nonprofit entities, and the federal government, and specifically intended for KHC to solicit contributions and grants from those entities.

KRS 11A.005(1)(a) and (d) provide:

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

(a) A public servant be independent and impartial;

...

(d) The public has confidence in the integrity of its government and public servants.

KRS 11A.045(1), relating to the acceptance of gifts, provides the following:

(1) No public servant, his spouse, or dependent child knowingly shall accept any gifts or gratuities, including travel expenses, meals, alcoholic beverages, and honoria, 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."

"Gift" is defined in relevant part in KRS 11A.010(5) as "a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received..."

The Commission has interpreted KRS 11A.045(1) to prohibit state agencies from soliciting or accepting gifts from persons or businesses that do business with, are regulated by, are seeking grants from, are involved in litigation against, or are lobbying or attempting to influence the actions of that state agency. (See Advisory Opinions 06-19 and 02-48).

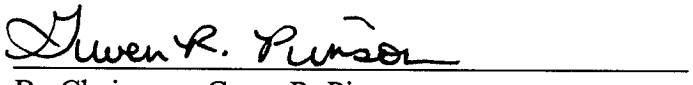
In Advisory Opinion 06-19, the Commission considered whether the Kentucky Commission on Human Rights may solicit and accept compensation for training services from individuals and entities that are subject to the provisions of the Civil Rights Act. In seeking permission to offer training to such individuals and entities, the Kentucky Commission on Human Rights relied on KRS 344.190(6), which permits it to accept gifts or bequests, grants, or other payments from public or private sources to help finance its activities. It should be noted that KRS 344.190(6) predates the creation of the Executive Branch Ethics Commission. The Commission determined that the authority granted to the Kentucky Commission on Human Rights to accept gifts must be exercised within the parameters of the Executive Branch Code of Ethics, prohibiting the Kentucky Commission on Human Rights from soliciting individuals or entities that it regulates.

Unlike the statute at issue in Advisory Opinion 06-19, KRS 198.400(4) was enacted after the Code of Ethics, and the Commission has received information that the specific legislative intent was for banks and other entities involved in the housing sector to donate money to KHPC. Further, the statute itself specifically states that KHC may *solicit* funds from the private sector, nonprofit entities, and the federal government. The statute at issue in Advisory Opinion 06-19 is not as specific as KRS 198.400(4), and contains authority to receive funds rather than to solicit funds.

KHC may solicit and accept contributions from entities it does business with for the benefit of KHPC, given the express legislative intent and statutory authority granted in KRS 198.400(4). KHC should be aware that solicitation of funding for KHPC from such entities may give the appearance that KHC would favor a particular entity in its business relations, and consider soliciting funding from all entities in a particular category of entities having a business relationship with KHC. For example, in the event that KHC intends to solicit funds on behalf of KHPC from lenders that participate in the Kentucky Homeownership Program, KHC should consider soliciting from all lenders that participate in that program.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: Gwen R. Pinson