



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION

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Executive Branch Ethics Commission
ADVISORY OPINION 20-03
November 16, 2020

RE: May the Property Valuation Administrators sell advertising space on their websites without violating the Executive Branch Code of Ethics?

DECISION: State agencies may use the mechanism provided in KRS 45A.097 to solicit sponsorships, which may include selling advertising space on state-sponsored websites, as long as the state agency follows the requirements of KRS 45A.097 and the procedures established by the Finance and Administration Cabinet for its implementation. Furthermore, the Executive Branch Ethics Commission recommends that the website include a disclaimer that any such advertisements are not to be considered an endorsement of the services or products of the advertisers pursuant to KRS 45A.097(4)(h) and (i).

This opinion is issued in response to your October 28, 2020 request for an advisory opinion pursuant to KRS 11A.110(1) from the Executive Branch Ethics Commission (Commission). The Commission reviewed your request at the November 16, 2020 meeting and issued the following advisory opinion.

You are a Property Valuation Administrator (PVA). You are seeking guidance from the Commission specifically for your office. However, any advice the Commission provides could be used by other PVAs to guide their conduct as well. You request that the Commission determine whether your office may use state-sponsored websites to provide advertising space to local businesses and use the advertising payments to fund your agency. You state the relevant facts in your letter and provided information to the Commission staff as follows:

Your office has long maintained two websites: (1) the official county PVA website that contains general office information; and (2) a Qpublic website that is used by the public to research property address information. Individuals may also purchase an annual subscription to search and view property information. Many of the PVAs maintain similar websites. You estimate that approximately 50 of the 120 PVAs maintain such Qpublic websites. You propose to allow businesses to purchase advertising space on the Qpublic website. The advertisements

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would appear on the search page and on the property report pages. You indicate that the sale of advertisements on your website would be open to the public, would comply with certain appropriate guidelines, and would be mostly used by local realtors, appraisers, surveyors, lenders, and tax professionals. The advertisements would comprise of JPG or PNG image files containing the prepared advertisements in three specific sizes to fit the screens on desktop computers, tablets, and smart phones. You intend to use the revenues to support your agency's budget and fund support staff in your agency.

You first sought approval from the Department of Revenue (Department) and the Finance and Administration Cabinet (Cabinet) for this proposal. Following the issuance of this Advisory Opinion of the Commission, the Finance and Administration Cabinet will reconsider the parameters of the PVA's request in accordance with the process authorized under KRS 45A.097.

The Executive Branch Code of Ethics codified at KRS Chapter 11A (The Ethics Code) provides a general policy statement in KRS 11A.005 concerning the use of state resources for private benefit:

11A.005 Statement of public policy.

- (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;
 - (b) Government policy and decisions be made through the established processes of government;
 - (c) A public servant not use public office to obtain private benefits; and
 - (d) The public has confidence in the integrity of its government and public servants.
- (2) The principles of ethical behavior for public servants shall recognize that:
 - (a) Those who hold positions of public trust, and members of their families, also have certain business and financial interests;
 - (b) Those in government service are often involved in policy decisions that pose a potential conflict with some personal financial interest; and
 - (c) Standards of ethical conduct for the executive branch of state government are needed to determine those conflicts of interest which are substantial and material or which, by the nature of the conflict of interest, tend to bring public servants into disrepute.

Furthermore, KRS 11A.020 determines certain prohibited conduct of public servants:

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

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

These provisions have been used by the Commission to indicate that public servants shall not use state time, equipment and resources to endorse the products and services of persons and businesses that are regulated by or doing business with a state agency. See also 9 KAR 1:025, Section 2(3).

In your request, you specifically refer to the Commission past opinions in Advisory Opinions 04-25 and 05-32. However, these opinions have been superseded due to the recent enactment of legislation created inroads into the application of the Ethics Code. In 2017 the General Assembly enacted a new statute in the Model Procurement Code codified at KRS 45A.097 to act as a clear exception to certain applications of the Ethics Code. KRS 11A.097 provides:

- (4) *Notwithstanding KRS Chapter 11A*, a governmental body may accept and solicit sponsorships from persons and businesses in the following manner:
- (a) A sponsorship shall be for a defined period of time, a specific event, or a particular governmental body purchase or need;
 - (b) A governmental body seeking to solicit a sponsorship shall advertise the sponsorship opportunity on its Web site, newsletter, or other written media for a minimum of seven (7) calendar days. A sponsorship opportunity shall describe the number of potential sponsorships available, the relative importance of price and other evaluation factors used to ensure "best value" as defined in KRS 45A.070, and the advertising or similar commercial considerations available from the Commonwealth for a particular sponsorship opportunity;
 - (c) The governmental body shall notify the Office of Material and Procurement Services in the Office of the Controller of the Finance and Administration Cabinet by providing copies of its sponsorship opportunity advertisements to the office. If the Office of Procurement Services approves or does not respond to the governmental body within one (1) business day of notification, the governmental body may proceed under this subsection;
 - (d) At the end of the advertising period for a sponsorship, all responses shall be evaluated in accordance with the evaluation factors set forth in the sponsorship opportunity;

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- (e) Written or oral discussions may be conducted with responsible bidders in accordance with KRS 45A.085(7);
- (f) A sponsorship shall be awarded to the responsible bidder determined in writing to be most advantageous to the Commonwealth, taking into consideration the evaluation factors set forth in the sponsorship opportunity. All evaluation documentation, scoring, and summary conclusions of the award shall be made a part of the file or governmental body record;
- (g) If insufficient eligible responses are received in response to the advertising of a sponsorship opportunity, and the purchasing officer determines in writing that further bidding would not likely result in additional responsive proposals being received by the Commonwealth, then noncompetitive negotiations with nonprohibited sources may be used to award contracts for the remaining number of sponsorships available;
- (h) *A sponsorship shall not constitute an endorsement of a particular business by the Commonwealth as the sole vendor of choice; and*
- (i) *An entity that is a prohibited source may be considered for a sponsorship opportunity only if there is a written finding by the purchasing officer that:*
 - 1. The entity is not lobbying or attempting to influence matters of the governmental body; and*
 - 2. The sponsorship will provide:*
 - a. A public benefit to the Commonwealth; or*
 - b. Economic development or enhanced tourism in the Commonwealth.*

(emphasis added). KRS 45A.096(11) defines “Sponsorship” to mean “an agreement for the receipt of cash or noncash value by a governmental body from a business or other entity in exchange for advertising or similar commercial considerations, including event sponsorships.” These provisions provide a clear exception to KRS 11A.005 and 11A.020 when the process established in KRS 45A.097 is properly followed.

As such, state agencies may use this sponsorship provision as guided by the Cabinet. It is the opinion of the Commission that you should seek the permission of the Office of Procurement Services to engage in advertising through sponsorships of your agency. If the Office of Procurement Services approves your proposed course of conduct of allowing advertisements to appear on the Qpublic website, then doing so does not violate the Ethics Code.

Upon such a finding by the Cabinet, and assuming that the state agency follows the letter and spirit of KRS 45A.097, then such conduct of advertising on the PVA’s websites should not be a violation of KRS 11A.020(1) or an improper use of state resources under KRS 11A.005. It would not be considered to be an endorsement of the businesses, services or products that are

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being advertised as provided in KRS 45A.097(4)(h) and would not be considered lobbying activities as determined by KRS 45A.097(4)(i).

Furthermore, to assure the public that this course of conduct is not in violation of the Ethics Code, the Commission recommends that the website include the following disclaimer on pages in which advertisements appear:

Advertisements for services or products that appear on the [INSERT COUNTY NAME] County PVA website were approved by the Office of Procurement Services at the Finance and Administration Cabinet through the sponsorship process, established under KRS 45A.097, are not endorsements of these businesses by the PVA office as provided in KRS 45A.097(4)(h), and are not to be considered lobbying activities as provided in KRS 45A.097(4)(i).

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By Chair: Roger L. Crittenden