



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION

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Executive Branch Ethics Commission
ADVISORY OPINION 21-09
July 29, 2021

GIFT EXCEPTION NO. 2021-1

RE:

1. The Department of Veterans Affairs requests an exemption to KRS 11A.045(1) for a non-merit employee to receive induction into the Kentucky Veterans Hall of Fame, which includes the receipt of a plaque and dinner worth more than \$25.
2. Whether acceptance of the induction would create a conflict of interest that would require the employee to recuse from any future matters involving the Kentucky Veterans Hall of Fame.

DECISION:

1. The Executive Branch Ethics Commission grants the exemption pursuant to KRS 11A.045(1).
2. The employee should follow a planned six-month moratorium on any decision-making concerning the Kentucky Veterans Hall of Fame to avoid any conflicts of interest as provided in KRS 11A.020(3) and KRS 11A.030.

This opinion is issued in response to your May 17, 2021, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This request was received without enough time to be considered at the Commission May 19, 2021 meeting. As such, this matter was reviewed at the July 29, 2021 meeting of the Commission and the following opinion is issued pursuant to KRS 11A.045(1) and KRS 11A.030(5).

On behalf of the Kentucky Department Veterans Affairs (KDVA), you request an exemption from the application of KRS 11A.045(1) concerning the induction of the Deputy

Commission into the Kentucky Veterans Hall of Fame. Furthermore, you request guidance concerning the conflict of interest provisions in the event the Commission grants the exemption.

You state the relevant facts as follows: The Deputy Commissioner, as part of his duties for the KDVA, serves as a voting member of the Veterans Trust Fund Board (the Board). The Board is attached for administrative purposes to KDVA, but is considered to be an independent body comprised of both KDVA employees and members from the general public appointed pursuant to KRS 40.315 and 201 KAR 37:010. As a practice, KDVA does not regulate the Board.

The Board awards grants to non-profit groups that provide services to benefit veterans. The Kentucky Veterans Hall of Fame (KVHOF) has received grants from the Board. KVHOF honors the services of certain veterans each year. The Deputy Commissioner is retired military and has been nominated for recognition by KVHOF for his military service. The award includes a plaque and a dinner at the awards ceremony in September of 2021 at the Marriott Griffin Gate Hotel in Lexington, Kentucky. The combined value of the plaque and dinner is estimated to be more than \$25, but less than \$100.

You ask whether the Deputy Commissioner may accept the nomination and induction into the Veterans Hall of Fame as well as receive the plaque and dinner at the ceremony. You further request whether, by receiving the nomination and induction, whether he should recuse himself from future actions concerning the KVHOF when appearing before the Board to request a grant.

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.*

(emphasis added). Based on the language above, ordinarily a public servant would be prohibited from accepting gifts with a value of over \$25 from any person or business doing business with, regulated by, seeking grants from, involved in litigation against, or lobbying or attempting to influence the actions of the Board. However, the Commission may grant an exemption to allow

a public servant to receive a gift from such an entity when receiving the gift would not create "an appearance of impropriety." The Deputy Commissioner has been nominated for the induction into the Hall of Fame for his military service that occurred prior to his term on the Board. Therefore, an appearance of impropriety should not be presumed from his nomination or induction into the Hall of Fame.

The KVHOF does not currently have any pending requests for grants before the Board; however, they may have future requests for grants. Nonetheless, all public servants must be mindful of following the guidance established in KRS 11A.030 for avoiding conflicts of interest. KRS 11A.030 provides:

In determining whether to abstain from action on an official decision because of a possible conflict of interest, a public servant should consider the following guidelines:

- (1) Whether a substantial threat to his independence of judgment has been created by his personal or private interest;
- (2) The effect of his participation on public confidence in the integrity of the executive branch;
- (3) Whether his participation is likely to have any significant effect on the disposition of the matter;
- (4) The need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the executive branch; or
- (5) Whether the official decision will affect him in a manner differently from the public or will affect him as a member of a business, profession, occupation, or group to no greater extent generally than other members of such business, profession, occupation, or group. A public servant may request an advisory opinion from the Executive Branch Ethics Commission in accordance with the commission's rules of procedure.

KRS 11A.020 further provides that a public servant should avoid certain conduct.

- (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;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
 - (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.

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- (2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.
- (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.

You have recommended through a follow up conversation with the Commission staff that the Deputy Commissioner should recuse from any decisions of the Board concerning the KVHOF that appear on the agenda for the Board during the next six months in the event that the Commission grants an exemption to KRS 11A.045(1) to allow him to receive the induction. This planned six-month moratorium on decision-making for the Board on the part of the Deputy Commissioner will cover any possible requests for grants from KVHOF that may be received by the Board from the issuance of this opinion until the induction ceremony and will prevail several months after the ceremony occurs. Therefore, any potential conflict of interest may be resolved by the Deputy Commissioner's recusal and abstention in compliance with KRS 11A.020(3).

The Commission grants an exception, pursuant to KRS 11A.045(1), for the Deputy Commissioner to accept the nomination and induction into the Kentucky Veterans Hall of Fame, including accepting the plaque and dinner at the ceremony. The Commission agrees that following a planned six-month moratorium on decision-making for the Board that would involve official decisions concerning the KVHOF would be sufficient to avoid any conflicts of interest.

EXECUTIVE BRANCH ETHICS COMMISSION


By Chair: Judge Roger L. Crittenden (Ret.)