



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION

JUDGE ROGER L. CRITTENDEN (RET.)
CHAIR

SEN. DAVID K. KAREM (RET.)
VICE CHAIR

CRIT LUALLEN
JUSTICE DANIEL J. VENTERS (RET.)
DAVID S. SAMFORD

CAPITAL COMPLEX EAST
1025 CAPITAL CENTER DRIVE, SUITE #104
FRANKFORT, KY 40601
(502) 564-7954
FAX: (502)-695-5939
[HTTPS://ETHICS.KY.GOV/](https://ethics.ky.gov/)

KATHRYN H. GABHART
EXECUTIVE DIRECTOR

STEVEN T. PULLIAM
GENERAL COUNSEL

SUCHETA MEENA MOHANTY
DEPUTY GENERAL COUNSEL

Executive Branch Ethics Commission
ADVISORY OPINION 21-11
September 30, 2021

GIFT EXCEPTION NO. 2021-2

RE: The Department of Worker's Claims, Labor Cabinet, requests an exemption to KRS 11A.045(1) for a non-merit employee to receive funds from a donation account established by his family to supplement his medical costs.

DECISION: The Executive Branch Ethics Commission grants the exemption pursuant to KRS 11A.045(1).

This opinion is issued in response to your August 23, 2021, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 30, 2021 meeting of the Commission and the following opinion and exception is issued pursuant to KRS 11A.045(1).

On behalf of the Kentucky Department Workers Claims (KDWC or the Department) of the Kentucky Labor Cabinet, you request an exemption from the application of KRS 11A.045(1) concerning a request from the family of a public servant who is also considered to be an officer pursuant to KRS 11A.010(7). You state the relevant facts as follows:

The public servant holds a position with KDWC that reviews the decisions of other Department employees through an appeals process. However, those decisions govern conflicts between members of the public. This employee's role is not a management position. He does not directly set Department policy or direct how Department funds are spent. The employee has recently been diagnosed with a medical illness that may result in increasing medical bills. The members of the public servant's family would like to establish a GoFundMe page to accept gifts of money to defray the expenses associated with his treatment. While donors are often

anonymous on the page, donors may decide to be identifiable. Nevertheless, the family cannot control who is identifiable and what amounts are donated to the page. As such, the amounts donated could exceed the minimum amount of gifts that are allowed to be received by public servants and may be donated by prohibited sources as listed in KRS 11A.045(1).

As such, on behalf of the public servant and his family, you ask whether the public servant may be granted an exception by the Commission from the application of KRS 11A.045(1) to accept the donations to the GoFundMe page.

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).

A “gift” is defined by KRS 11A.010 as follows:

- (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; "gift" does not include gifts from family members, campaign contributions, the waiver of a registration fee for a presenter at a conference or training described in KRS 45A.097(5), or door prizes available to the public;

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 a prohibited source when receiving the gift would not create “an appearance of impropriety.”

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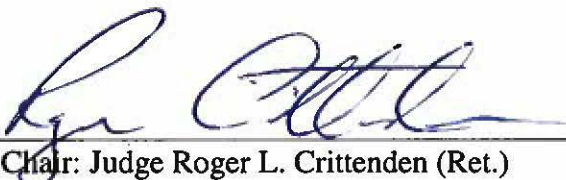
The Commission addressed similar situations in Advisory Opinions 05-37, 07-4 and 13-01. In Advisory Opinion 05-37, an employee of the Kentucky Transportation Cabinet (KYTC) lost his six-year-old daughter in a tragic accident that also resulted in life-threatening injuries to the public servant and his four-year-old son. A subcontractor of KYTC that worked on a project the public servant had inspected wanted to make contributions to an account set up to assist the public servant and his family. The Commission approved the exception.

In Advisory Opinion 07-04, another employee of the KYTC had been diagnosed with leukemia and was on extended leave from his position. KYTC had asked for donations for the public servant and his family from within KYTC and wished to accept donations from contractors of the cabinet as well. The public servant worked with several highway contractors as a part of his job duties and many of those contractors had offered to make a donation. The Commission authorized an exception to allow the public servant to accept donations from highway contractors despite the business relationship with the KYTC and the public servant having direct contact as part of his official duties with these contractors.

In Advisory Opinion 13-01, a public servant was an employee of the Kentucky Retirement System who worked with outside vendors. The public servant's wife was diagnosed with cancer and the public servant was assisting in her care. The vendor and its employees wanted to assist financially with the care of the family through the difficult time. The Commission approved the exception in this matter as well.

As with all of these advisory opinions, the Commission continues to contend that the gift exception authorization in KRS 11A.045(1) was established for circumstances such as the one described above. The Commission believes that no appearance of impropriety will be created in this situation should the public servant be permitted to accept gifts from otherwise prohibited sources. The intent of the donations is not to influence decisions of the public servant in conducting public business. The Commission therefore grants your request for an exception pursuant to its authority contained in KRS 11A.045(1) in order for the public servant to accept donations from the GoFundMe page regardless of the source of the donation for the purpose of defraying the medical costs.

EXECUTIVE BRANCH ETHICS COMMISSION


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