



COMMONWEALTH OF KENTUCKY

EXECUTIVE BRANCH COMMISSION

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Executive Branch Ethics Commission

ADVISORY OPINION 24-06

November 13, 2024

RE: May the Correctional Farm Manager at Blackburn Correctional Complex receive a monetary award from the Thoroughbred Industry Employee Award Organization for his outstanding work as manager of Blackburn's thoroughbred retirement farm?

DECISION: No, but the monetary award may be donated in his honor to the thoroughbred retirement farm operated at Blackburn Correctional Complex.

This opinion is issued in response to a request from the Warden at the Blackburn Correctional Complex for an advisory opinion from the Executive Branch Ethics Commission (the "Commission") regarding the propriety of an employee of the Kentucky Justice and Public Safety Cabinet accepting a monetary award from the thoroughbred industry for outstanding work as a correctional farm manager. This matter was reviewed at the November 13, 2024, meeting of the Commission and the following opinion is issued.

The Thoroughbred Retirement Foundation (the Foundation) is a non-profit organization that has collaborated with correctional complexes in eight states to set up retirement farms for thoroughbred horses. The Foundation provides financial support and expertise to those correctional farms to provide round-the clock care for retired racehorses. One of these eight farms operates on land owned by the Commonwealth at the Blackburn Correctional Complex,

with labor provided by inmates, under supervision by correctional officers. Inmates in the equine program tend the horses and receive vocational training about equine care and management, with the aim of learning work skills for employment in the thoroughbred industry upon release from prison.

The Foundation submitted the name of the Correctional Farm Manager at the Blackburn Correctional Complex to the Thoroughbred Industry Employee Award Organization as a potential award recipient for the “Dr. J. David Richardson Community Award, sponsored by Churchill Downs.” The Community Award is one of several Thoroughbred Industry Employee Awards and in addition to the award it includes prize monies of \$7500 for the winner, \$3500 for two finalists, and awards of \$2000 to two more runners-up. These awards and prizes are bestowed by thoroughbred industry sponsors for outstanding contributions to the thoroughbred industry. The Warden asks the Commission for its opinion as to whether this monetary award may be accepted by a public servant.

In its review of the ethical questions surrounding the acceptance of these prize monies the Commission must review both KRS 11A.040(5) and KRS 11A.045(1). First, we analyze the question under KRS 11A.045(1) which states as follows:

- (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 the appearance of impropriety. This subsection shall not apply to:
 - (a) Activities involving sponsorships, naming rights, or similar honoraria granted under KRS 45A.097; or
 - (b) Individuals traveling on their own while involved in activities related to KRS 45A.097.

KRS 11A.045(1) is inapplicable to the facts presented by the present scenario because the funds for the award and prize come from a non-profit organization and do not come from a source specifically prohibited by that statute. The “Thoroughbred Industry Employee Organization” is a non-profit organization set up to honor thoroughbred industry employees and as such is not doing business with the Corrections Cabinet and therefore is not a prohibited source, as set out in KRS 11A.045.

Secondly, we analyze the question from a review of KRS 11A.040(5) which provides:

(5) A public servant shall not knowingly accept compensation, other than that provided by law for public servants, for performance of his or her official duties without the prior approval of the commission.

“Compensation” is defined in KRS 11A.010(3) as “any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, to be rendered, by himself or herself or another.” In this set of facts where the award herein is in recognition of the performance of official duties, is given by an outside source, and is monetary in nature, it clearly falls within the definition of prohibited additional compensation for the performance of a public servant’s duties. As stated by the Commission in Advisory Opinion 12-07:

The underlying concern is that executive branch ethics employees are required to be independent and impartial. Acceptance of monetary or tangible rewards for the performance of one’s official duties, particularly those donated by outside entities, may create a perception that decisions made by your employees are not objective. Being given substantial awards for the performance of official duties creates concerns under KRS 11A.040(5) even in situations where KRS 11A.045(1) is not an issue. (Exec. Branch Ethics Comm., AO 12-07, page 4).

This employee’s outstanding performance of his official duties is laudatory and well-worthy of recognition; however, such does not immunize him from the requirements of KRS 11A.040(5) or permit his receipt of substantial monies from an outside source for the performance of his official public service duties.

However, as stated above in the analysis of the gifts provision contained in KRS 11A.045(1), it does not appear from the facts presented that the donating organization “does business with” Blackburn Correctional Complex. While the Foundation and Blackburn Correctional Complex have agreements in common pertaining to the administration of the thoroughbred retirement program, such does not appear to be true with the donor of the prize monies. Therefore, we turn to the language of KRS 45A.097(1) which deals with a governmental body’s acceptance of a donation or gift and states:

- (1) A governmental body may accept donations and gifts from persons or businesses to further the governmental body’s mission or to benefit the Commonwealth. Donations and gifts shall not be from a prohibited source.

KRS 45A.096(4), in relevant part, defines donation as “a monetary or in-kind contribution given to a governmental agency to further the governmental body’s mission with no tangible or intangible benefit to the donor. Name recognition on a commemoration or memorial shall not constitute a tangible or intangible benefit to the donor.”

In this fact pattern, while KRS 11A.040(5) prohibits the public servant from acceptance of an award of a large sum of money from an outside source for the performance of his official duties, KRS 45A.097(1) would permit those monies to be given to his agency, the Blackburn Thoroughbred Retirement Farm program in his honor. If the Thoroughbred Industry Employee Award Organization chooses to make such a donation, the donation should be used in honor of the farm manager and to further the mission of the program to which he has given such outstanding service.

EXECUTIVE BRANCH ETHICS COMMISSION


By Chair: Sen. David K. Karem (Ret.)