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EXECUTIVE BRANCH COMMISSION

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Executive Branch Ethics Commission
ADVISORY OPINION 25-01
November 12, 2025

RE: May the Treasurer of the Commonwealth of Kentucky solicit private funds from various financial institutions, and their officers, for the benefit of the Kentucky Financial Empowerment Commission (KFEC), of which he serves as Chair?

DECISION: Qualified yes. The better practice is for the Executive Director of KFEC to do so on behalf of the entire Commission.

This opinion is issued in response to a request from the Treasurer of the Commonwealth of Kentucky, Mark H. Metcalf, for an advisory opinion from the Executive Branch Ethics Commission (the "Commission") as to the propriety of his possible solicitation of private funds from banks and other financial institutions for the benefit of the Kentucky Financial Empowerment Commission. This matter was reviewed at the November 12, 2025, meeting of the Commission and the following opinion is issued.

The Kentucky Financial Empowerment Commission (KFEC) is a 501(c)(3) nonprofit organization that promotes financial literacy and financial empowerment for all Kentuckians. KFEC was created as an independent de jure municipal corporation and subdivision of the Commonwealth of Kentucky. Therefore, while KFEC is not a part of the Treasury department, by statute it is somewhat affiliated with it and is required to provide technical, clerical and

administrative assistance and support to the commission. See KRS 41.455(8)(a) and Advisory Opinion 16-09. KFEC is governed by a Board consisting of eleven members, of which the State Treasurer serves both as a board member and as its Chair. KRS 41.450 and KRS 41.455. The powers and duties of the Kentucky Financial Empowerment Commission are exercised by its Board. KRS 41.460(1)(b) and (e) authorize the Board to enter into agreements, contracts, or other documents with government agencies or with persons, corporations, associations, partnerships or other organizations necessary to accomplish its purposes and to accept for inclusion in the fund appropriations, grants, revenue sharing, devises, gifts, bequest, donations, federal grants, and any other aid from any source whatsoever and to agree to, and to comply with, conditions incident thereto. To accomplish these purposes the Board now employs a full-time Executive Director who is directed by KRS 41.460(g) to act under the direction of the board, carry out the policy and program directives of the commission, be responsible for the day-to-day operations of the commission, establish appropriate organizational structures and personnel policies, and to perform all other duties as directed by the commission or assigned by law.

Initial funding was not included in the passage and establishment of the KFEC and was obtained from solicitation of financial institutions. At that time there was no funding for the functioning of the Commission and so, pursuant to KRS 41.455(8)(a), startup administrative services were provided by the State Treasury. As funding is currently waning for the operation of this Commission, the State Treasurer questions whether he may directly solicit the financial institutions that he does business with and regulates to obtain funding for KFEC.

The Executive Branch Code of Ethics, which applies to all officers and public servants in the executive branch of state government, prohibits employees from soliciting and/or accepting

gifts or donations over \$25 in value 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, the agency for which the employee works. KRS 11A.045(1). However, the legislature created an exception to this general rule in 2002 which permits agencies and their employees to raise funds for charitable nonprofit organizations granted a tax exemption by the Internal Revenue Service under Section 501(c) of the Internal Revenue Code. KRS 11A.055(1) permits a state agency or a public servant to raise such funds by holding events for the benefit of the charitable organization, contacting potential donors, providing prizes, and engaging in other forms of fundraising, and requires that all funds raised must be provided to the charitable organization. Such exception would permit the solicitation of donations from any person or business regardless of that person's or business' relationship to KFEC. However, the appearance of impropriety may still exist even where KRS 11A.055 permits such solicitation, and agencies and public servants must exercise great care and be mindful of conflicts of interest when soliciting donations and conducting fundraising activities.

The question herein presented involves possible direct fundraising by the Treasurer of the Commonwealth of Kentucky from financial institutions that he, as State Treasurer, does business with and regulates. The State Treasurer is the head of the Department of Treasury and is a constitutional officer and a statutory officer of the executive branch of government. His duties as State Treasurer also include serving as Chair of the State Investment Commission, which monitors the short-term investment of over \$3 billion of Commonwealth funds in financial institutions, and serving with the Secretary of the Finance and Administration Cabinet to select and designate banks as state depositories, for the deposit and disbursement of all state funds by the State Treasurer. Additionally, KRS 41.474 tasks the Treasurer to prepare and

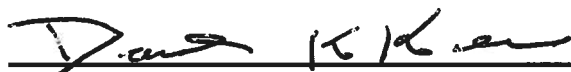
maintain a list of all financial companies engaging in energy company boycotts and to communicate with those financial companies regarding divestment or sale of publicly traded securities. We are informed that such negotiations by the State Treasurer are currently occurring.

KRS 11A.030 provides the following when considering whether to abstain from action on official decision:

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

In this case, the direct solicitation of private funds from financial institutions by the State Treasurer creates the potential for conflict with his statutory duties as State Treasurer. It creates a possible appearance of impropriety, even where none is present. The language in KRS 41.455(7), creating the board of the Kentucky Financial Empowerment Commission, recognizes the possibility of such conflicts of interest and mandates that KFEC board members disclose and recuse from consideration of any matter in which they have a direct or indirect interest in any organization, department, or agency with which the commission seeks to enter a contract. Therefore, the better practice in this instance would be for the Executive Director of KFEC to make such inquiries and outreach, acting under the direction of the Board. Solicitations, gifts, sponsorships under KRS 45A.097(4), and other fundraising avenues could then be explored and adopted by the Board and carried out on its behalf by the Executive Director of the Kentucky Financial Empowerment Commission.

EXECUTIVE BRANCH ETHICS COMMISSION


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