

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-30
June 23, 2000

RE: May Board of Nursing accept computer from the National Council of State Boards of Nursing?

DECISION: Yes.

This opinion is in response to your May 9, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 23, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Kentucky Board of Nursing ("Board") contracts with the National Council of State Boards of Nursing, Inc. ("National Council"), a sole source, to provide the examination nurses must take in order to be licensed. The National Council is an organization composed of state boards of nursing which pay a membership fee. The Board pays no fee for the examination service; however, applicants who take the examination must pay a fee. As part of the examination process, the National Council installs a computer in every board of nursing in the United States to allow the state boards to communicate electronically with the National Council concerning the examination. The state boards verify applicants to take the examination by this computer, and the National Council notifies the state boards of the applicants' examination results by this computer.

Recently, the National Council notified the state boards that these computers would be replaced by newer ones. The National Council does not want the outdated computers returned, but wishes to give them to the state boards. The Board asks whether it may accept the computer for administrative use.

KRS 11A.045(1) provides:

(1) No public servant, his spouse, or dependent child knowingly shall accept tangible gifts or gratuities totaling a value greater than twenty-five dollars (\$25) in a single calendar year, or travel expenses, meals, alcoholic beverages, lodging or honoraria of any value, from any person or business that does business with,

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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. The following items are exempt:

(a) Coffee, soft drinks, pastries, hors d'oeuvres, or similar refreshments;

(b) Food consumed at a public event to which twenty-five (25) or more individuals are in attendance if that event is also open to participants other than public servants and members of the donor's industry;

(c) Meals, beverages, and free admission to an event if the public servant, as a part of his official duty, is a speaker or has a significant role in the program;

(d) A campaign contribution to an employee's own campaign if in compliance with KRS Chapters 121 and 121A and all other campaign finance laws;

(e) A gift from a family member who is not acting as an intermediary for a person from whom the gift would be otherwise prohibited;

(f) Food, clothing, and shelter in times of natural disaster or other emergency;

(g) Door prizes, if also open to persons other than public servants and members of the donor's industry and if all participants have an equal chance of receiving the prize;

(h) Gifts which are modest, reasonable, and customary, received on special occasions such as marriage or retirement;

(i) Awards of modest and reasonable value which are publicly received in recognition of public or charitable service, such as plaques;

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(j) Prizes awarded based solely on skill, such as those received in golf or tennis tournaments, if those tournaments are open to participants other than public servants and members of the donor's industry;

(k) Meals at conferences or seminars which are included as part of the dues paid or registration fee and which are available to all attendees; and

(l) A single copy of a textbook received by an educator for review.

Additionally, in Advisory Opinion 96-42, the Commission stated that a state agency should not accept gratuities from an entity that does business with or is regulated by the state agency.

Because the Board makes no payment to the National Council for this service, it does not appear that the Board is doing business with the National Council. Additionally, because the National Council is the sole source of such a service, and there is no competition to provide this service for the Board, it does not appear that a conflict of interest will result if the Board accepts the computer from the National Council. Thus, the Commission believes that the Board may accept the computer from the National Council for its administrative use.

Furthermore, effective July 14, 2000, KRS 11A.045 will be amended to allow the Commission to authorize exceptions to the law where the exemption will not create an appearance of impropriety. The Commission believes that this is such a situation that would not create an appearance of impropriety.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Bertie Oldham Salyer, M.A., A.M.E.

Enclosures: Advisory Opinion 96-42