

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-49
August 18, 2000

RE: May employees accept incentive bonus award?

DECISION: Yes, if authorized by law through pilot personnel program.

This opinion is in response to your July 27, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 18, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. In the fall of 1999, New Vision Enterprises ("NVE") (formerly Industries for the Blind) initiated an incentive bonus program to encourage increased piecework assembly output of flatware packs for a contract with the U. S. Department of Defense. This program is structured to uniformly reward employees for increased output levels on a monthly basis.

At least two individuals who have received the incentive bonuses are or were state employees at the time the bonuses were received. The maximum monthly bonus amount awarded has been \$45. You state that prior to the inception of the program, NVE contacted an executive staff advisor for the Department of the Blind regarding the propriety of the program. The Office of Auditor of Public Accounts ("APA") also contacted the executive staff advisor regarding the program. She conveyed to the APA that she had provided advice to you on the ability of the state's payroll system to manage the program and not on the program's ethical propriety. She also indicated to the APA that all state employees working for NVE would no longer be state employees, effective July 1, 2000.

The APA questions whether NVE's incentive bonus constitutes compensation in addition to an employee's state salary referred to in KRS 11A.040(5). The APA also advised you to request an advisory opinion on this matter from the Commission. Thus, you request an advisory

opinion as to whether the incentive program established by your company may violate KRS 11A.040(5), which provides:

(5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

“Compensation” is defined in KRS 11A.010(3):

(3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;

Based on the fact that, effective July 1, 2000, employees of NVE are no longer state employees, KRS 11A.040(5) no longer applies to employees of NVE. Thus, the question as to whether the incentive program violates KRS 11A.040(5) does not need to be addressed for this specific situation. However, because it appears that some employees of NVE accepted incentive awards while they were state employees, subject to the ethics code, the Commission addresses this issue below.

Without prior approval of the Commission, the provisions in KRS 11A.040(5) above prohibit an employee from receiving compensation, other than that provided by law, for performance of his official work. Thus, it appears that the NVE employees, who were also state employees when they received the additional incentive compensation, should not have accepted such an award without prior approval of the Commission.

However, various incentive programs, such as the employee suggestion system, the adoption benefit program, the education achievement award, the employee recognition award, and the adjustment for continuing excellence award, authorized by statute or regulation, allow for certain employees to receive compensation in addition to their state salaries. Acceptance of such compensation by employees is allowed and does not need prior approval of the Commission because it is authorized by law.

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KRS 18A.400 to 18A.450 provides authorization for the development of agency pilot personnel programs. KRS 18A.445 provides that up to fifty percent (50%) of any savings attributed to an agency's pilot personnel program may be retained by the agency and may be used for salary incentives not to be added to the base of an employee's salary.

From the information provided, the Commission cannot determine whether the incentive bonus program is or was one of these pilot personnel programs authorized in KRS 18A. The Commission believes that if the incentive bonus program is a pilot personnel program authorized under KRS 18A, then those employees who were also state employees at the time they received the awards may retain their awards. The Commission believes that such awards were authorized under KRS 18A.445.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Bertie Oldham Salyer, M.A., A.M.E.