

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 01-1
February 9, 2001

RE: May vendor offer discount for computer products to state employees?

DECISION: Yes, within limitations.

This opinion is in response to your November 6, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 15, 2000, and February 9, 2001 meetings of the Commission and the following opinion is issued.

You state the relevant facts as follows. New legislation passed by the General Assembly directs the Governor's Office for Technology ("GOT") to develop and promote initiatives to address the digital divide in Kentucky. An executive committee is developing a set of strategies, actions, and tasks for this initiative. Computer and information literacy is one of the important dimensions of the divide issue, and your committee is concerned about the low level of technology adoption and literacy by state employees, citizens that represent an element of the divide. Thus, the committee is exploring options which are available to stimulate state employee personal computer purchase, use and training at home.

Several vendors of GOT have approached your committee requesting to offer hardware discounts to state employees for their personal use. Another vendor that provides web-based training for GOT would like to offer training courses to employees for personal use at home. In these cases, state employees would receive a discount by virtue of their employment status – a discount not available to the general public. You ask if GOT may move forward with this initiative without raising an ethical issue. Several other states, including Indiana, have partnerships with the private sector to encourage employee purchase of computers.

Regarding the acceptance of gifts, 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

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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.

“Gift” is defined in KRS 11A.010(5) as:

(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, or door prizes available to the public;

For purposes of addressing the digital divide, the Commission believes that vendors of GOT are not prohibited from offering reasonable discounts to state employees who wish to purchase computer products, provided the discounts are offered to employees of all state agencies and are not limited to a select group or a particular agency, and provided the vendor offers a reasonably consistent discount to its other customers' employees. The Commission believes that such a discount will not create a conflict of interest for GOT employees who are not involved in the selection of computer products. The Commission views this in light of other discounts which are offered to state employees (i.e., Kentucky Kingdom). Employees who are involved in the selection of computer products as a part of their official duties should not accept such a discount.

The Commission recommends that in the future GOT consider including such a discount requirement in any Requests for Proposals sent out to computer vendors. Such a discount would be considered part of the state's open bid for competition.

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Additionally, GOT should take great care not to publicize, promote or endorse any of the vendors that offer such discounts. The Commission encourages GOT to work to close the digital divide in the Commonwealth as a whole and not just with state employees.

Sincerely,

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