

REWRITTEN AND RENUMBERED AS EXCEPTION 2001-2
For issue MAY 11, 2001

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~~Executive Branch Ethics Commission~~
ADVISORY OPINION 01-5
~~March 30, 2001~~

~~RE: _____ May employees accept reimbursement for training costs from non-profit agency?~~

~~DECISION: No.~~

~~_____ This opinion is in response to your February 2, 2001, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 9 and March 30, 2001, meetings of the Commission and the following opinion is issued.~~

~~_____ You state the relevant facts as follows. The National Fire Protection Association ("NFPA") is a non-profit organization that engages in fire safety and fire investigations, and develops standards in the area of fire protection. The NFPA is composed of individual members, both Department of Housing, Buildings and Construction (the "Department") employees and non-employees. Members may participate in code development for the NFPA. However, the NFPA has paid staff members as well.~~

~~_____ The Department does not regulate the NFPA in any way. However, the Department does purchase code books from the NFPA. If the Department wishes to use the standards set up by the NFPA, then it must purchase the code books that the NFPA publishes.~~

~~_____ Currently, through the NFPA, the state of Kentucky has a well-established and beneficial children's program called "Learn Not to Burn." The NFPA, in partnership with Lowe's Home Safety Council, recently developed a new injury prevention program, entitled *Risk Watch*®. This program, if implemented in Kentucky, will be implemented locally through local fire, police, health, and education units cooperating in the schools, pursuant to statutory authority.~~

~~———— The NFPA has invited the assistant director in the Office of the State Fire Marshal, and two colleagues, to attend a *Risk Watch*® training in Cambridge, Massachusetts. The training will prepare the individuals to implement and measure the effect of the *Risk Watch*® program in~~

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Kentucky. If the Department decides to implement the program, the materials for *Risk Watch*® must be purchased from the NFPA. You ask if the NFPA may reimburse the Department and other agencies for costs incurred by employees while attending the training necessary for implementation of the *Risk Watch*® program.

——— In considering your request, the Commission reviewed KRS 11A.045(1) that 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 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.

——— The Commission reviewed several advisory opinions (copies of which are enclosed) pertinent to your request, as well. Based on the provisions above, employees are prohibited from accepting gifts and gratuities from persons or businesses that do business with, or are regulated by, the state agency for the employee works. Additionally, in previously issued advisory opinions, the Commission stated that an agency's acceptance of gratuities from an entity seeking to do business with the agency would create a conflict of interest for the agency and would tend to damage public confidence in the integrity of government. Advisory Opinion 99-23 prohibited an employee from allowing a company to pay his travel expenses, meals and lodging while visiting a transportation research center and attending a demonstration of the company.

——— Similarly, the Commission believes that although the employees are not prohibited from attending the training at no charge (if other participants also are not charged — see Advisory Opinion 00-63), the employees, as well as their state agencies, should not accept reimbursement from the NFPA for other costs incurred while attending the training, such as meals and lodging,

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and travel expenses. Even though the NFPA is a non-profit entity, it still seeks business from the agencies of the Commonwealth, and as an "association" it is included in the definition of "person" in KRS Chapter 11A. In Advisory Opinion 00-36, the Commission stated the even if a grant is from a nonprofit organization to be used to further the state agency's goals, it should not be accepted by a state agency if the agency regulates the nonprofit organization or its members.

Furthermore, although the NFPA may be the sole source for the materials needed for the *Risk Watch*® program, the fact that employees of state agencies are making decisions whether to implement the *Risk Watch*® program creates a conflict for employees of those agencies or for the agency itself to accept such reimbursement from the NFPA.

As stated in other advisory opinions, the Commission believes that if the *Risk Watch*® program is beneficial to the state, the Department should pay the expenses of its employees to attend the training. The Commission also points out, pursuant to Advisory 94-39, that if the Department purchases the *Risk Watch*® program and such training costs are included as part of the original agreement for the product purchased, and thus were a part of open competition for the state's business, then the Department may accept such reimbursement for costs associated with the training. Such an agreement also should be available to all customers of the NFPA.

Sincerely,

Executive Branch Ethics Commission

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

Enclosures: Advisory Opinion 94-39

Advisory Opinion 99-23

Advisory Opinion 00-36

Advisory Opinion 00-63