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BOYCE A. CROCKER

**ADVISORY OPINION 01-25**

June 22, 2001

RE: May employee organizations provide lunch and gratuities for state employees?

DECISION: Yes, with limitations.

This opinion is in response to requests from several agencies for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 22, 2001, meeting of the Commission and the following opinion is issued.

The relevant facts are presented as follows. The Governor of Kentucky recently issued an executive order creating the Governor's Employee Advisory Council ("Council"). This Council is an advisory and resource body that will make recommendations to the Governor relating to wages, hours, and other conditions of public employment, pursuant to KRS 12.090. The executive order divides nonsupervisory, classified employees, hired pursuant to KRS 18A, 151B and 16A, into nine categories, each of which may have one representative on the Council. Employee organizations seeking to represent employees in a particular category must obtain evidence that at least 30% of the employees in that category desire that organization to be their representative. Thereafter, an election will be held under the supervision of the Secretary of the Labor Cabinet.

The Secretary of the Labor Cabinet has established a method for certifying the initial members of the Council. The method provides, among other things, that employee organizations may solicit employees at state offices, but only during employees' non-work time and in non-work areas. Employee organizations must arrange for meeting times and places in advance to minimize disruption to state work. Some employee organizations have offered to bring lunch to employees when they conduct informational meetings. The value of each lunch provided would be less than \$25.

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 01-25**

June 22, 2001

Page Two

Other than the Labor Cabinet, the Revenue Cabinet (because some of the organizations do not have tax exempt status), and the Personnel Cabinet (because of its responsibility under the Executive Order of assignment of employees to appropriate categories), most state agencies do not have a business, regulatory, or other influential relationship with the employee organizations involved.

The question to be addressed is whether the Executive Branch Code of Ethics prohibits classified employees from accepting meals or other gratuities from employee organizations seeking to represent those employees on the Council.

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 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.

In Advisory Opinion 97-5 (a copy of which is enclosed), the Commission stated that although employees of the Transportation Cabinet make decisions concerning health insurance vendors, such decisions are personal ones of employees and do not affect the operation of state government. The Commission believes that a similar situation exists here in that although employees may select a particular employee organization to represent them on the Council, such a decision is a personal one and not one that affects the operation of state government.

As stated above, the Labor Cabinet has established a method for certifying the initial members of the Council. Although the Commission is not aware of all of the details used in certifying the members, and thus is not issuing an opinion on the propriety of the methods being used, the Commission has learned that this method allows employee organizations to solicit employees at state offices but only during employees' non-work time and in non-work areas. The

**ADVISORY OPINION 01-25**

June 22, 2001

Page Three

Commission believes if an employee organization offers lunch or a gratuity with a value of less than \$25 to an employee in a non-work area of a state office building in, the employee would not be prohibited from accepting the lunch or the gratuity. However, the Commission cautions employees of those state agencies involved in the regulation of these employee organizations either as a result of the executive order or the result of other statutory duties not to accept gratuities with a value of greater than \$25 per source, and also to avoid any possible appearances of impropriety that may arise through the acceptance of such gratuities. Moreover, those agencies involved in the regulation of employee organizations should not solicit any meals or gratuities for employees.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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

Enclosure: Advisory Opinion 97-5