

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-2

January 25, 2002

RE: May Department of Veteran's Affairs accept donations for new facilities from vendors seeking to do business with the Department??

DECISION: No.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own motion. This matter was reviewed at the January 25, 2002 meeting of the Commission and the following opinion is issued.

The relevant facts as follows. The Department of Veteran's Affairs (the "Department") has a new cemetery under construction in Western Kentucky and two new veterans' nursing homes under construction in Western and Eastern Kentucky. Local communities have expressed overwhelming support for these facilities, especially in light of recent events. Various persons and businesses have offered donations of items and services for the facilities. For example, individuals have donated land for each site. Additionally, offers of gravel for roadways, shovels for groundbreaking, markers or statues for the entry, and mowing services for the cemetery have been received. Some general guidelines are needed in regard to accepting such donations. The Department is not a regulatory agency nor has it done business in the past with any of the persons or entities offering donations. However, it would be reasonable to assume that contracts may be awarded in the future for products or services on which such persons or businesses may wish to bid.

KRS 11A045(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

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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.

As provided above, an employee is prohibited from accepting donations from persons or businesses doing business with, or attempting to do business with, the agency for which the employees works. Advisory Opinion 97-9 (enclosed) issued by the Commission states that “solicitation of potential vendors or entities regulated by the employees’ agency creates a conflict of interest in appearance, if not in fact, for those employees.”

The Commission also has opined in several advisory opinions (copies of which are enclosed) that an “agency” should not accept gifts or donations from persons or businesses doing business with or attempting to do business with the agency. Thus, the Commission advises the Department not to accept a donation from a person or business seeking the Department’s business.

The Commission believes that the Department may accept donations from persons or businesses that are not seeking to do business with the Department, but the Department should notify the person or business, in advance of a donation, that such acceptance by the Department may affect the Department's ability to consider them as a vendor in the future.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.

Enclosures: Advisory Opinion 97-9
Advisory Opinion 96-42
Advisory Opinion 97-28

