

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 04-16

May 27, 2004

RE: May the Secretary of State solicit contributions for a political party?

DECISION: Yes, however an appearance of a conflict may exist.

This opinion is issued in response to your April 26, 2004 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 27, 2004 meeting of the Commission and the following opinion is issued.

The relevant facts are provided as follows. The Secretary of State is an elected constitutional officer who directs the Department of State for the Commonwealth of Kentucky pursuant to KRS 14.025. You ask whether a constitutional officer, such as the Secretary of State, may solicit contributions from individuals on behalf of the Republican Party of Kentucky.

KRS 11A.005 (1)(a) and (d) provide:

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

(a) A public servant be independent and impartial;

...

(d) The public has confidence in the integrity of its government and public servants.

Additionally, KRS 11A.020(1)(a) provides:

(1) No public servant, by himself or through others, shall knowingly:

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(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

According to KRS 12.020, the State Board of Elections and the Registry of Election Finance are attached to the Department of State, with the Secretary of State serving as a member of the State Board of Elections (KRS 117.015). As a member of the State Board of Elections, the Secretary of State serves as the chairman of the board and the chief election official for the Commonwealth. The Attorney General, the Secretary of State, and the State Board of Elections, by mutual agreement, may petition Franklin Circuit Court to declare that an election crisis exists in a county and to authorize the Board to manage the election (KRS 117.022).

The Secretary of State serves in a position that is responsible for the fairness of elections in the Commonwealth. Thus, although the Commission believes that the Executive Branch Code of Ethics does not directly prohibit the Secretary of State from soliciting political contributions for private candidates or a political party, it does believe that the solicitation of such contributions may give an appearance of a conflict to the public. If the Secretary of State were involved in the solicitation of contributions for a political party and then, as a part of his official duty, were involved in a matter regarding an election that involved a private political party, it may give the appearance that the Secretary of State is not independent and impartial in his decision making.

Consequently, the Commission believes that if the Secretary of State wishes to avoid any appearance of a conflict, he should refrain from soliciting political contributions from individuals on behalf of a political party.

The Commission advises all public servants, including constitutional officers, not to use state facilities or resources when soliciting political contributions for candidates or political parties, with the exception of the use of the Governor's Mansion, pursuant to Advisory Opinion 94-59.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinion 94-59