

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 04-41**

December 17, 2004

RE:                    May technical education schools run by the Education Cabinet accept honorarium from KCTCS and local board of education technical education schools?

DECISION:            Yes, within limitations.

This opinion is in response to your October 6, 2004, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 17, 2004 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Department of Workforce Investment ("Department") within the Education Cabinet runs approximately 55 technical education schools ("Tech Ed schools") throughout the Commonwealth of Kentucky. These schools usually offer a half-day curriculum to high school students. Tech Ed schools instruct students in auto mechanics, cosmetology, shop, etc. In addition to the state Tech Ed schools, there are also technical education schools that are run by the Kentucky Community and Technical College System ("KCTCS") and the local boards of education that are not affiliated with the Department.

A non-state board, the National Automotive Technicians Education Foundation ("NATEF"), writes the curriculum for, as well as certifies and regulates, the technical schools. NATEF also "certifies" instructors (referred to as "Evaluation Team Leaders", or "ETLs") to review the programs and curriculums of technical schools to ensure that they meet NATEF standards. Several instructors at the Tech Ed schools have this certification, many of which were trained during the course of their state employment. Thus, as part of their official duty while on the state payroll, they perform reviews of other Tech Ed schools' programs and curriculums and certify those schools.

Until recently, the NATEF allowed the individual state technical education departments to request the ETL to review a technical education school for certification within the state.

Recently, however, NATEF instituted a policy stating that the ETLs performing the certifications would be randomly selected by NATEF, taking away the Department's ability to request Tech Ed employed ETLs to review only the Tech Ed schools.

Traditionally, Tech Ed employed ETLs receive no compensation for performance of a review of a Tech Ed school because it is considered part of their official duty for the Department to perform such reviews, even though NATEF policies state that an honorarium of \$225 will be paid by the school receiving the review. However, when a Tech Ed employee is asked to perform a review of a KCTCS or local board of education technical school, it is not considered a part of an employee's official duty for the Department and the employee is required to take annual leave for such a review.

Thus, you ask the following:

1) Since Department policies dictate that Tech Ed employees receive no compensation for the review, may the Tech Ed employee accept the compensation and donate it to the Tech Ed school by which he is employed?

2) Since Department policies dictate that Tech Ed employees receive no compensation for the review, may the Tech Ed school by which a reviewer is employed accept the \$225 honorarium directly from the KCTCS or from a local board of education technical school that received the review?

KRS 11A.040(5) provides:

(5) A public servant shall not knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

Additionally, 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.

As you have indicated, ETLs have properly refused to accept honoraria for their own personal benefit when they perform certification reviews, as part of their official duties. To personally accept this compensation for the performance of the reviews, in addition to their state salaries, would constitute a violation of KRS 11A.040(5). See Advisory Opinion 93-31 (a copy of which is enclosed), in which the Commission advised a cabinet secretary that he should not receive additional compensation for the performance of his official duty.

However, if an ETL performs a review that is considered by the Department not to be part of his official duty for the Cabinet, then the Commission believes that the ETL is not prohibited from accepting the honorarium, provided the Department is not involved in doing business with, funding, or regulating the KCTCS or local board of education technical schools, and the ETL certainly may donate it to the Tech Ed school by which he is employed.

The Commission believes that even if the Department is involved in regulating or funding local board of education technical schools, as long as the ETL has no involvement as part of his official duty with the local technical school that he is reviewing, he may accept the honorarium for the local technical school and donate it to the Tech Ed school by which he is employed. The Commission believes that such an exception will not create an appearance of impropriety.

It is the position of the Commission that such a donation would be acceptable. KRS 11A.005 states that the "proper operation of democratic government requires that:

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(a) A public servant be independent and impartial;

...

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

Likewise, the Commission believes that a Tech Ed school may directly receive a donation from a KCTCS technical school or local board of education technical school for the services of the Tech Ed reviewer if the Department is not involved in doing business with, regulating, or funding the technical school reviewed. While several previously issued advisory opinions establish the Commission's longstanding consistent interpretation that state agencies may not solicit or accept gifts from persons that do business with, are regulated by, receive grants from, or are seeking to influence the actions of the state agency, such appears not to be the case here.

Whereas other KCTCS and local technical schools may be seeking to have the ETLs approve them for certification, it is the individual ETL, not the Tech Ed school for which the ETL works, who makes this decision. The state agency that would accept the gift of the honorarium, in this case the Department, appears to have no regulatory authority over the KCTCS and local technical schools, nor do the other KCTCS or local technical schools do business with or appear to have any reason to attempt to influence the actions of the Department to which it is donating the honorarium. See Advisory Opinion 02-48 for further guidance.

The Commission cautions, however, that if the Department does have responsibilities for funding or regulating the KCTCS or local board of education technical schools, then the Department should not directly accept the donation from the school that is reviewed.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: James S. Willhite

Enclosures: Advisory Opinion 93-31  
Advisory Opinion 02-48