

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 04-42

December 17, 2004

- RE: 1) May Chairman of Public Service Commission attend and participate in a program sponsored by a utility association that represents local energy companies regulated by the Public Service Commission?
- 2) May the Chairman accept reimbursement from the association for the costs of attending said program?
- DECISION: 1) Yes.
- 2) No.

This opinion is in response to your October 14, 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 Chairman of the Public Service Commission ("PSC"), along with three utility commissioners from other states, have been invited to participate in a program sponsored by a utility association that represents local energy companies and also by the National Association of Regulatory Utility Commissions. The purpose of the program, to be held in New York City on January 27-28, 2005, is to educate utility commissions on the role that the regulatory process plays in the financial community's evaluation of energy utility stocks and bonds. The program is also to provide the financial community with a greater understanding of the factors affecting state utility commission decision-making processes relative to energy utilities. This program was begun by the utility association in January 2001, and since that time some 45 commissioners have participated in these meetings.

The utility association has offered to pay for the Chairman's expenses associated with this program, including travel, transportation, lodging, and meals. The PSC regulates the rates, terms, and conditions for non-municipal local natural gas distribution services in Kentucky, while the utility association represents 192 local energy companies delivering natural gas nationwide. You presume that many, if not all, of the gas distribution companies regulated by the PSC are members of the utility association.

You ask: 1) Whether the Chairman may attend and participate in the program, and
2) Whether the Chairman may accept reimbursement from the utility association for the costs of attending said program?

Since the purpose of the program is educational and presents the Chairman with an opportunity to learn about how the regulatory process impacts the financial community while in turn providing the financial community with a greater understanding of state utility commission decision-making processes, it would seem to be an appropriate event for the Chairman to attend. However, based on KRS 11A.045(1), stated below, it would not be appropriate for the Chairman to accept reimbursement from the utility association for the costs of attending the program.

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.

Since KRS 11A.045(1) states that travel expenses in excess of \$25 in a calendar year may not be accepted “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” (emphasis added), and the national utility association represents the interests of local energy companies regulated by the PSC, the Chairman should not accept travel expense reimbursement for transportation, lodging, and meals from the utility association. See Advisory Opinions 93-50, 00-61, and 02-4, attached.

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Additionally, in Advisory Opinion 04-8 (a copy of which is enclosed), the Commission stated that a waiver of a registration fee for a presenter at a professional conference to attend additional sessions of the conference would constitute a gift to the presenter. In Advisory Opinion 04-29 (a copy of which is enclosed), the Commission stated that although it thought it was worthwhile for employees to interact with licensees in order to train and provide information to them, and that generally the presenter should not have to pay a fee to attend a function to present such information, other gratuities such as meals and entertainment at the function should not be accepted. In Advisory Opinion 04-36 (a copy of which is enclosed), the Commission further stated that if a program presenter wishes to attend other functions of an annual convention, in addition to the session for which he is a presenter, either he or his agency should pay any registration fee or other fees required.

Therefore, in addition to the travel expense issue, if there are any registration fees or other fees associated with the program that exceed \$25, excluding any session at which the Chairman will be an active presenter or participant, the Chairman should not attend daily functions of the program without payment of the registration and associated fees.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: James S. Willhite

Enclosures: Advisory Opinions 93-50
 Advisory Opinions 00-61
 Advisory Opinions 02-4
 Advisory Opinions 04-8
 Advisory Opinions 04-29
 Advisory Opinions 04-36