

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 05-4

February 18, 2005

RE: Does the charging of a higher conference registration fee for nonmembers, who may be regulated by the PSC, violate the code of ethics?

DECISION: No.

This opinion is issued in response to your January 14, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 18, 2005 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. As Chairman of the Kentucky Public Service Commission ("PSC"), you serve this year as President of the Southeastern Association of Regulatory Utility Commissioners ("SEARUC"). SEARUC's annual summer conference is being held at the Northern Kentucky Convention Center in June of 2005.

SEARUC is comprised of utility regulatory commissioners from eleven southeastern states. The purpose of SEARUC is the advancement of commission regulation through the study and discussion of subjects concerning the operation and supervision of public utilities, the promotion of the uniformity of regulation by the several commissions, the promotion of coordinated action by the commissions of the southeastern states to protect the common interest of the people with respect to regulation, and the promotion of cooperation among the commissions of the southeastern states. SEARUC charges no registration fee to the eleven states for membership, but rather is funded through registration fees from its annual conference.

Historically, in addition to current and former commissioners and staffs of the states, members of industry, federal agencies and consumer groups have likewise been invited to attend SEARUC's annual conference. However, because industry, consumer groups and federal agencies are not SEARUC members, but are invited guests, they are assessed a registration fee of \$150 more than SEARUC members pay to attend the conference.

A question has arisen as to whether this additional charge to nonmembers of SEARUC would be considered industry sponsorship.

Further, you state that a conference of this magnitude requires a good deal of effort and coordination. It is your intention to have a number of PSC employees travel to Northern Kentucky to work at the conference as part of their official duties for the PSC.

You ask the following:

- 1) *Would the Executive Branch ethics code be violated, in any way, by virtue of members of industry, consumer groups, or federal agencies being assessed a higher registration fee for the SEARUC conference than current and former Commissioners and Commission staff of the various SEARUC states?*
- 2) *Is there any prohibition in the Executive Branch ethics code against employees of the Kentucky Public Service Commission performing duties, during work hours, at the SEARUC conference?*

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.

The Commission believes that charging nonmembers a registration fee higher than members to attend a conference does not rise to the level of "sponsorship," provided the difference in the fees is not unreasonable in value. In researching this matter, the Commission

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noted that many professional organizations charge a registration fee greater for nonmembers to attend their annual conferences.

Further, the additional charge applies to any individual or organization that is not a member, whether that be someone from an industry regulated by members that comprise SEARUC, consumers who use the services regulated by the SEARUC members, or employees of federal agencies with an interest in regulation. The Commission believes that the charging of a fee of \$150 greater for nonmembers to attend is not a gift to SEARUC because those attending are receiving the benefit of the conference, provided the fee is reasonable for the conference.

However, the Commission cautions that although this may not rise to the level of “sponsorship” because individuals in industry, and other consumers, are required to pay a higher registration fee to attend the conference, the appearance that the conference is being funded, in part, by industry and others may be unavoidable. If SEARUC, and thus PSC, wishes to avoid even an appearance of impropriety, it may want to charge the same registration fee for all attending.

See enclosed Advisory Opinions 00-55 and 96-12 that provide additional information on solicitation related to the hosting of professional conferences.

Regarding your second question, the Commission believes that the question as to whether the official duties of employees of the PSC may include performing duties for the SEARUC conference is a management decision. If management believes that it is in the best interest of the PSC to allow employees to perform such duties, such action is not prohibited by the Executive Branch Code of Ethics.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: James S. Willhite

Enclosures: Advisory Opinion 00-55
Advisory Opinion 96-12