

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 05-18**

March 30, 2005

**AUTHORIZATION FOR EXCEPTION TO KRS 11A.045(1)**

**EXCEPTION NO. 2005-2**

- RE:
- 1) Are expenses of spouse of an executive branch employee to attend an annual meeting of a hospital's board of directors, of which spouse is a member, considered a gift?
  - 2) May the executive branch employee receive exemption to accept gift from hospital by which spouse is employed?
- DECISION:
- 1) No.
  - 2) Yes, within limitations.

This opinion is in response to your March 9, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 30, 2005 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. Your spouse is a member of the Board of Directors for a local community hospital. The Board's annual meeting is scheduled at a resort in West Virginia. The hospital considers the event to be a training function because it conducts seminars for the board members in addition to the meetings. Thus, the hospital will pay for your spouse's accommodations (room and meals). All spouses of board members also have been invited to attend. If you do attend, the hospital would pay an additional sum for your meals.

As an employee for the Finance and Administration Cabinet ("Finance"), you hold a major management position over many aspects of Finance's operations, including the Department of Revenue. The Department of Revenue regulates all entities subject to tax laws, including the

hospital. However, you are unaware of any specific proceedings or contracts that the hospital has before Finance. Further, you have had no direct involvement in any matters, as a part of your official duty, involving the hospital. Accordingly, you would like to make sure that you properly follow the Executive Branch Code of Ethics ("Code") regarding this trip. Your primary question is whether the hospital's annual meeting at the resort is a gift to your wife pursuant to KRS 11A.045(1). Additionally, you ask if the Commission does determine this to be a gift under KRS 11A.045(1), that an exception be granted. You do not believe that attending this event creates an appearance of impropriety, as it is a routine practice for the hospital and its board to hold its annual meetings at such places, and all of the Board members will be staying there.

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.

KRS 11A.010(5) defines "gift" as follows:

"Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; "gift" does not include gifts from family members, campaign contributions, or door prizes available to the public;

The Commission notes that the purpose of the annual meeting is for the hospital's Board of Directors to conduct business meetings as well as attend training seminars. Thus, it believes that the accommodations that will be provided to your wife are for business purposes due to her affiliation with the hospital, and thus would not be considered a "gift" under the Code to the extent they relate to those purposes.

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However, any additional expenses incurred as a result of you accompanying your wife on this business trip would be a gift either to you or her. You indicate that the only additional expense the hospital will incur if you accompany your wife would be the cost of your meals. Since the hospital would not be receiving "consideration of equal or greater value" from you or your wife as a result of your attendance, and it is assumed that the costs of the meals would exceed twenty-five dollars, it would appear that any additional expense incurred as a result of you accompanying your wife would be a gift. Thus, because of the regulatory relationship that exists between Finance and the hospital, it is the opinion of the Commission that, should you accompany your wife on the trip, you should reimburse the hospital for any extra cost incurred as a result, unless you are granted an exception as provided in KRS 11A.045(1).

In this case it is the Commission's opinion that your acceptance of this "gift" from the hospital would not create an appearance of impropriety as long as the hospital has no pending proceedings or other regulatory matters pending before Finance. Further, because the spouses of all members are invited to attend the annual meeting it does not appear that by inviting you to attend the meeting at the hospital's expense the hospital is attempting to influence your actions in some way. Your request for an exception, pursuant to KRS 11A.045(1), is hereby granted as long as the hospital has no pending proceedings or other regulatory matters pending before Finance.

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

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

(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;

The Commission also would like to advise that because of your spouse's service to the Board of the hospital, you should abstain as part of your official position from any and all matters that would come before Finance concerning the hospital. Pursuant to KRS 11A.020(3), you should document such intention to abstain in writing.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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**BY CHAIR:** James S. Willhite

Enclosure: Advisory Opinion 95-22