

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 05-29

May 27, 2005

RE: May employees accept gifts for legal aid from corporation established to assist employees with payment of legal fees?

DECISION: Yes, within limitations.

This opinion is issued in response to your May 23, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 27, 2005 meeting of the Commission and the following opinion is issued.

This request involves matters pertaining to the current investigation by the Attorney General into the hiring practices of the current administration regarding the merit system of the Commonwealth of Kentucky. Several employees in the executive branch of the Commonwealth will not be able to pay legal bills that they are likely to incur. You ask whether a separate corporation that complies with all tax law may be created to collect funds and assist in the payment of such employees' legal fees.

The corporation would be for that purpose only and will not be connected to or with the Republican Party of Kentucky. Your concern is whether the payment of these legal fees would be in violation of KRS Chapter 11A, specifically KRS 11A.045(1), which reads:

- (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

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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 issue that must be addressed by this request is whether employees who are subject to investigation regarding hiring practices of the current administration of merit system employees may accept, as a gift, assistance for the payment of their legal fees from a corporation established to pay such fees.

Executive branch employees are prohibited from accepting gifts, which includes assistance with payment of their legal fees, from any persons or businesses that do business with, are regulated by, or in any way are seeking to influence the actions of the state agency of each individual employee, or from any group or association that has as its primary purpose the representation of those persons or businesses. A legal aid fund established to provide assistance with payment of legal fees for employees clearly represents the interests of those donating to it since the donors direct the use of the monies collected in the fund. Further, the assistance provided to employees for payment of legal fees is, in substance, a gift from the donors to the recipients, even if a separate corporation is created to distribute the monies.

Consequently, the Commission believes that employees may accept assistance for payment of legal fees from the fund if the donors to the fund (persons or businesses) do not do business with, are not regulated by, and are not seeking to influence the actions of the individual state agencies for which each employee works. However, if a donor (person or business) does business with, is regulated by, or in any way seeks to influence the actions of a state agency for which an employee works, then neither the employee, nor the employee's agency, should accept assistance from the fund.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: James S. Willhite