

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 05-43

December 16, 2005

RE: May GOLD employees solicit vendors of GOLD for sponsorship of annual conference of professional organization?

DECISION: No.

This opinion is issued in response to your December 2, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 16, 2005 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Governor's Office for Local Development ("GOLD") desires to host the 2006 annual Southern Regional Conference of the Council of State Community Development Agencies ("COSFDA") in Kentucky. COSFDA is a 501(c)(3) nonprofit corporation organized to assist state agencies in the promotion of community development, affordable housing, local economic development and state/local relations. COSFDA's website states that it "is the premier national association advocating and enhancing the leadership role of states in community development through innovative policy development and implementation, customer-driven technical assistance, education, and collaborative efforts."

GOLD, through its employees, further desires to solicit private sponsors to finance this conference so that no state or federal funds will be needed to host the event. You request an advisory opinion as to whether GOLD, through its employees, may solicit sponsors for the 2006 COSFDA annual conference from any business, including vendors of GOLD, provided such solicitation complies with the Kentucky Model Procurement Code and 200 KAR 5:080.

In support of this request you submit the following arguments:

- 1) KRS 11A.055 provides that a “state agency or a public servant may raise funds, either individually or as a department or agency, for a charitable nonprofit organization granted a tax exemption by the Internal Revenue Service under Section 501c of the Internal Revenue Code without violating the provisions of this chapter.” You believe the COSCDA is such an organization;
- 2) To the extent GOLD employees solicit sponsors who are not engaged in any current or prospective business with GOLD and who are not regulated by GOLD, there would be no direct violation of solicitation rules or breach of the prohibition against conflicts of interest;
- 3) To the extent GOLD employees solicit sponsorships from vendors of GOLD or entities seeking to do business with GOLD, there would be no appearance of a conflict of interest since the donation would inure to the benefit of the COSCDA conference , and not to either the employee or GOLD; and
- 4) Pursuant to the express provisions of 200 KAR 5:080, GOLD employees may solicit sponsorships from vendors of GOLD or entities seeking to do business with GOLD when such sponsorship will benefit the Commonwealth or promote economic development or tourism within the Commonwealth. According to Section 3, Subsection 6 of the regulation, “[a]n entity that has a business or regulatory relationship with the agency, or who may be lobbying or attempting to influence matters of that agency may be considered for a sponsorship opportunity only if there is a clear benefit to the Commonwealth, or the sponsorship promotes economic development or tourism in the Commonwealth.”

You state that bringing the COSCDA conference to Kentucky through the solicitation of sponsorships would indeed provide clear benefits to the Commonwealth and would promote economic development and tourism. It is anticipated the various officials from other states will attend the conference. Kentucky officials who administer Community Development Block Grants, homelessness and economic development programs would share with other states’ officials about the innovative and economic and community development projects going on in Kentucky. In turn, Kentucky’s public officials would learn demonstrated “best practices” from others in this regional community.

KRS 11A.005(1)(a) provides:

- (1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:
 - (a) A public servant be independent and impartial;

Additionally KRS 11A.020(1)(d) 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 has advised in many previously issued advisory opinions (copies of which are enclosed) that state agencies and employees may solicit financial sponsorship, for state programs or work-related conferences, from interested parties, provided the party solicited does not do business with, is not regulated by, and is not seeking to influence some action of the state agency. If a business or regulatory relationship exists between a state agency and the person/entity solicited, the person/entity may feel pressure to provide sponsorship if solicited by employees of the state agency.

Specifically, in Advisory Opinion 02-28, the Department of Agriculture (“Agriculture”) was preparing to conduct the annual meeting of the National Association of Departments of Agriculture (“NASDA”), and the Commissioner of Agriculture sought to solicit corporate sponsors to help defray the associated costs. Neither the Commissioner, nor Agriculture was to receive any personal benefit from the solicitations. The Commission opined that because NASDA promoted the interests of Agriculture that the Commissioner could allow the director of NASDA to use the Commissioner’s name in solicitation letters sent from the director to prospective donors even if the donors did business with or were regulated by Agriculture. However, the Commissioner was advised not to solicit directly sponsors that did business with or were regulated by Agriculture, or could be affected by regulation of Agriculture. Although NASDA

was a nonprofit 501(c)(6), business league organization, it was not considered a “charitable” organization, pursuant to KRS 11A.055(1), provided below:

(1) Any provision of KRS Chapter 11A to the contrary notwithstanding, a state agency or a public servant may raise funds, either individually or as a department or agency, for a charitable nonprofit organization granted a tax exemption by the Internal Revenue Service under Section 501c of the Internal Revenue Code without violating the provisions of this chapter. Raising of funds shall include but not be limited to holding events for the benefit of the charitable organization, contacting potential donors, providing prizes, and engaging in other forms of fundraising and providing the funds thus raised to the charitable organization.

Likewise, the Commission believes that even though COSCDA is a 501(c)(3) organization, because it is not a charitable organization, but rather an association that promotes the common interest and goals of states with respect to housing and development, employees of GOLD may solicit sponsors for the COSCDA annual conference, provided the sponsors are not doing business with, seeking to do business with, regulated by, or attempting to influence the actions of GOLD, but may not solicit vendors of GOLD.

Addressing your assumptions that such sponsorship will provide clear benefits to the Commonwealth and will promote economic development, in Advisory Opinion 02-21, the Commission did conclude that an agency could enter into a public/private partnership with a private company to “**promote a state program**” that would benefit the entire Commonwealth or would promote economic development or tourism. However, it appears from the information you have provided that the sponsorships you will be soliciting are not for a “state program,” but rather are for an annual conference of a nonprofit corporation. The Commission does believe that such financing of a professional conference is not promotion of a state program even if the conference ultimately provides some benefit to the Commonwealth.

Further, administrative regulation 200 KAR 5:080 regarding contracts for sponsorships appears to apply to “parameters under which an **executive branch agency** may enter into a written contract for sponsorship” of state programs, not sponsorships for a conference of a professional organization.

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Thus, the Commission advises that GOLD, through its employees, should not solicit vendors of GOLD for sponsorship of the COSDCA annual conference due to the inherent conflicts of interest that exist.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb

Enclosures: Advisory Opinion 00-55
 Advisory Opinion 02-21
 Advisory Opinion 02-28
 Advisory Opinion 04-19
 Advisory Opinion 04-31