

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 06-1

February 17, 2006

RE: May out-of-state consulting firms that have contractual agreements with the Commonwealth provide an in-state liaison to enhance the services they are providing?

DECISION: Yes, since proposed arrangement is within the scope of the contracts.

This opinion is in response to your January 11, 2006, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 17, 2006, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Commonwealth of Kentucky entered into contractual agreements with two Washington, D.C. based consulting firms on October 6, 2003, to assist in protecting the state's military facilities and communities during the federal Base Realignment and Closure (BRAC) 2005 process. These initial contractual agreements have been extended through June 30, 2006, with additional funding programmed to extend services through Fiscal Year 2007 and 2008. In order to enhance the fulfillment of their duties under the contracts, these consulting firms propose contracting with an individual to act as an in-state liaison to assist their services to the Commonwealth and its communities surrounding military installations with post-BRAC initiatives. It is our understanding that this individual will have workspace within your agency's office, the Kentucky Commission on Military Affairs ("Military Affairs").

You indicate that the Commission on Military Affairs supports the proposal for a forward in-state liaison to the Commonwealth and the Commission on Military Affairs for the purpose of enhancing communication and coordination as outlined in the Memoranda of Agreement ("MOAs") between the Commonwealth and the consulting firms. You have been advised by the

Finance and Administration Cabinet and the Commonwealth's Office of Technology that in order to enable this arrangement, your agency may provide the necessary office space and/or equipment from existing resources as long as no additional cost is incurred by the agency. You have verbally confirmed that this arrangement would result in no significant additional cost to your agency.

You ask for the Commission to review this proposal and seek an Advisory Opinion to ensure that the proposal is consistent with the standards of conduct outlined in the Executive Branch Code of Ethics.

KRS 11A.005(d) states that the "proper operation of democratic government requires that . . . [t]he public has confidence in the integrity of its government and public servants."

Additionally, KRS 11A.045(1) provides:

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;

Several previously issued advisory opinions establish the Commission's long-standing consistent interpretation as precedent that state agencies may not solicit or accept gifts, including services, from persons or businesses that do business with, are regulated by, receive grants from, or are seeking to influence the actions of the state agency.

However, following a review of the applicable MOAs, it appears that the proposal by the consulting firms to provide an in-state liaison, while not expressly stated therein, is within the scope of the contracts for which "equal consideration" is being paid for any benefit received, and is not a "gift" to Military Affairs or the Commonwealth. It would appear that the in-state liaison is being provided by the consulting firms as a more expedient way to provide the previously agreed upon services for which they are already receiving compensation.

Thus although your agency may not accept services from the consulting firms that go beyond the scope of the existing contracts, as such services would be considered a "gift" to your agency from a person or business that does business with your agency, because these services do not appear to be a gift to the Commission on Military Affairs or the Commonwealth, but rather fulfillment of a contract, and there being no other apparent issue of potential concern under KRS Chapter 11A, the proposed arrangement is consistent with the standards of conduct outlined in the Executive Branch Code of Ethics.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb