

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 06-6

April 10, 2006

RE: Reconsideration of Advisory Opinion 03-37

DECISION: Uphold original opinion.

This opinion is issued in response to your March 7, 2006 request for a reconsideration of Advisory Opinion 03-37 by the Executive Branch Ethics Commission (the "Commission"). This matter was reconsidered at the April 10, 2006 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You recently reviewed Advisory Opinion 03-37 and although you agree with the portion of the opinion that relates to the prohibition of gifts made to a state organization, you believe the portion of the opinion relating to gifts made to a private foundation may not be accurate. You believe that KRS 11A.055(1), provided below, is directly relevant to the issues in the opinion, but because there is no reference to KRS 11A.055(1) in Advisory Opinion 03-37, you believe that it was not considered in the issuance of the opinion.

In your opinion, KRS 11A.055(1) removes the prohibitions of KRS Chapter 11A concerning the solicitation and acceptance of gifts by the state organization and state employees when doing so for a Section 501(c) charitable foundation. You believe this statute allows activities that are prohibited by Advisory Opinion 03-37. Thus, you ask the Commission to reconsider Advisory Opinion 03-37.

11A.055 Raising of funds for certain activities permitted.

(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.

The Commission did consider KRS 11A.055(1) in its issuance of Advisory 03-37, but believed it was not directly relevant since the question posed to the Commission was whether the donations could be accepted by the Bluegrass Challenge Academy, a program within the Department of Military Affairs (not a Section 501(c) charitable organization). Although not asked, the Commission offered in the opinion that the Kentucky Youth Challenge Foundation (the "Foundation"), a charitable Section 501(c)(3) was not prohibited from accepting donated items because it was not a state agency.

Nowhere in Advisory Opinion 03-37 does it not prohibit the Bluegrass Challenge Academy or its employees from soliciting and accepting gifts for the Foundation; thus it does not intend to forbid any activities allowed by KRS 11A.055(1). However, the provisions in 11A.055(1), while allowing state employees to solicit for charitable organizations such as the Foundation, do not provide an exception to allow state agencies to accept donations from vendors of their agencies.

In Advisory Opinion 03-37, the Commission stated that if items are solicited and accepted by the Foundation for the purpose of giving them to the Bluegrass Challenge Academy, in substance the donations by the vendor are for the benefit of the Bluegrass Challenge Academy, and a possible conflict could occur for certain employees.

Thus, the Commission believes that employees may solicit vendors for donations for the Foundation to be used for scholarships for youth, but if such donations are in turn given to the Bluegrass Challenge Academy, an actual conflict still exists for employees involved in making

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 06-6
April 10, 2006
Page Three

purchases from vendors if the employees are aware of the source of the donations. Accordingly, although such donations from the Foundation to the Bluegrass Challenge Academy are not prohibited, a potential for conflict may still exist.

Thus, the Commission upholds its original opinion in Advisory Opinion 03-37.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb