

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 06-21
August 25, 2006

- RE: 1) May COT notify state employee of vendor discount if part of vendor contract?
 2) May COT employees involved in selection process accept vendor discount?
- DECISION: 1) Yes.
 2) No.

This opinion is issued in response to your August 9, 2006, request for a clarification of Advisory Opinion 01-1 from the Executive Branch Ethics Commission (“Commission”). This matter was reviewed at the August 25, 2006, meeting of the Commission and the following opinion is issued.

You state that while the general proposition of Advisory Opinion 01-1, that a vendor may, within certain limitations, offer a discount for computer products to state employees, is not an issue, there is an ambiguity in the opinion. You quote the following two paragraphs from the opinion:

The Commission recommends that in the future GOT consider including such a discount requirement in any Requests for Proposals sent out to computer vendors. Such a discount would be considered part of the state’s open bid for competition.

Additionally, GOT should take great care not to publicize, promote or endorse any of the vendors that offer such discounts. The Commission encourages GOT to work to close the digital divide in the Commonwealth as a whole and not just with state employees.

You interpret the first paragraph to mean that the Commission endorsed what is now known as the Commonwealth Office of Technology (“COT”) issuing a request for proposals which allows for computer vendors to propose, as part of the competitive bidding process, a reasonable discount for state employees who wish to use computer products for personal use. This discount would only become available once a particular vendor was deemed the successful vendor for contract award. However, you say that the next paragraph seems to indicate that while COT can require a vendor to include a discount in a competitive bid process, COT is not allowed to tell anyone about it, thereby rendering the discount virtually meaningless.

You also express a concern about the section of Advisory Opinion 01-1 that states “[e]mployees who are involved in the selection of computer products as a part of their official duties should not accept such a discount.” You believe this restriction unfairly punishes individuals and that they should be entitled to the same benefits as all other state employees since the selection of a contract vendor was done through a competitive bid process.

You request clarification of the intent of this aforementioned language contained in Advisory Opinion 01-1, including specifically what is meant by the admonition that COT “should take great care not to publicize, promote or endorse any of the vendors that offer such discounts” in light of a competitive bidding process being undertaken.

The Commission continues to support the inclusion of an employee discount requirement in any Request for Proposals sent out to computer vendors. Since such a discount is part of the state’s open bid for competition, it is a cleaner way to handle the question of vendor discounts for state employees than addressing such discount offers piecemeal, and furthermore serves to eliminate KRS 11A.045(1) concerns regarding gifts to public servants. In such instances, where a discount is included in a contract awarded through the competitive bid process, the Commission believes that mere notification to state employees of this contract, including the discount, does not publicize, promote or endorse the vendor. However, COT should not advertise the vendor or its products publicly other than such notification to state employees of the contract terms.

Concerning employees who are involved in the selection of computer products as a part of their official duties, the Commission believes that although a discount may be included as a part of a state contract to purchase, and thus is not a “gift” as defined under the ethics code, a conflict of interest still may exist for employees to be involved in the selection process of vendors if they know that they can benefit personally from the terms of the contract with the vendor. Should a vendor discount be included in a contract awarded through a competitive bid process, the Commission is of the opinion that all state employees, except those involved in the selection process, should be entitled to that discount.

With the exception of these above clarifications, Advisory Opinion 01-1 remains unchanged.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb

Enclosure: Advisory Opinion 01-1