

Executive Branch Ethics Commission
ADVISORY OPINION 07-12
June 29, 2007

RE: May agency accept donation of scrap yard land?

DECISION: Yes, within limitations.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own motion. This matter was reviewed at the May 10 and June 29, 2007 meetings of the Commission and the following opinion is issued.

Recently, the Commission reviewed a matter brought to its attention regarding scrapyards property donated to the Finance and Administration Cabinet (the "Cabinet") by an individual from whom the state leases many rental properties for office space. The Commission's long-standing interpretation of KRS 11A.045(1) prohibits state agencies (in addition to state employees) from accepting gifts, as defined below, from neither persons nor businesses with which they do business.

KRS 11A.010 (5) provides:

(5) "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;

In response to the Commission's request for an explanation concerning this matter, the Cabinet states that the plain language of KRS 11A.045(1) provides that its gift prohibition applies *only* to a "public servant, his spouse, or dependent child." Further, the Cabinet believes that the Commission's broad interpretation of this language would prevent the Cabinet from accepting property donations which significantly benefit the Commonwealth. The Cabinet strives to ensure that the acceptance of property for the public benefit does not create any appearance of impropriety.

The Cabinet views this specific transfer as an arm's-length transaction in which the Cabinet, as consideration for the property, *assumed a significant environmental liability* from the owners since the property is contaminated with arsenic, chromium, lead, benzopyrene, and PCBs. Even if the Cabinet were subject to the interpretation by the Commission, the

Cabinet provided consideration in this transaction and the property transfer was *not* a “gift” under KRS 11A.045(1). The appraisal of this property expressly stated that the amount was the value of this property *free of any environmental hazards*. The estimated cost to contain the environmental hazards is significantly more than the appraised value of the property.

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.

The Commission believes that in this case because the cost to contain the environmental hazards of the property is greater than the value of the property free of any environmental hazards, the donation does not appear to be anything of value, as donated, and thus is not a gift as defined in KRS Chapter 11A. In substance, the donated property had no value in its current state without environmental improvements. Consequently, the Commission deems the donation to be allowable under KRS 11A.045(1) as previously interpreted.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: John A. Webb