

Executive Branch Ethics Commission
ADVISORY OPINION 08-13
May 9, 2008

RE: May pharmaceutical companies provide written brochures for wellness programs?

DECISION: Yes.

This opinion is issued in response to your April 24, 2008 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 9, 2008 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. You are employed by the Personnel Cabinet, Department for Employee Insurance (the "Department"), which administers the Kentucky Employees Health Plan ("KEHP"). Recently, several pharmaceutical companies have offered to provide to the Department printed materials at no cost on such topics as diabetes, depression, Alzheimer's, etc. The companies have all agreed not to attempt to sell their products through these materials, and thus the materials will not advertise specific drugs, but will simply list the name of the company providing the brochure. All materials also will have the "KEHP" logo printed. The pharmaceutical companies also have offered to provide speakers for programs that the Department offers throughout the state as part of its wellness programs.

The Department is open to such partnering provided the materials and information provided is beneficial to the education of employees regarding specific diseases. You also express that the Department would like to utilize such companies to provide training throughout the state for insurance coordinators, and perhaps provide refreshments and/or lunch for such training classes. The Department holds no (and does not plan to hold) contracts with any of the pharmaceutical companies. You ask if any of the circumstances noted above would be prohibited under the Executive Branch Code of Ethics.

KRS 11A.020(1) (d) provides:

(1) No public servant, by himself or through others, shall knowingly:

...

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- (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

In Advisory Opinion 02-21 (a copy of which is enclosed), the Commission addressed state agencies partnering with private companies to provide public benefits and concluded that state agencies should not allow private companies to reference any state agency on private materials distributed for promotional purposes of the company or its products. State agencies should not appear to be endorsing or promoting a private company or its products. Even so, the Commission further stated that if materials distributed by the private company are merely brochures advertising a state program, and do not identify the private company, other than to state “printed by” and the company’s name, then such use of the logo is acceptable.

Since the pharmaceutical companies have no business or regulatory relationship with the Personnel Cabinet and do not appear to be lobbying or attempting to influence the Personnel Cabinet, the Commission believes that in the same way the Department may allow the private pharmaceutical companies to provide to the Department printed materials on various health-related issues that do not advertise or mention specific drugs and which only reference the names of the pharmaceutical companies as “printed by.” However, in order to avoid any appearance that the state is endorsing a specific company, the Commission prefers that the materials distributed not reference any company’s name, as well.

Moreover, since the goal of the partnership between the Department and the pharmaceutical companies will be to promote the Department’s wellness programs that will benefit the people of the Commonwealth and not to promote the pharmaceutical companies, then any benefit derived by the pharmaceutical companies is secondary. The benefit to the people of the Commonwealth outweighs any private benefit the company may receive. The Commission reiterates the advice provided in Advisory Opinion 02-21, that to remove any appearance of favoritism, such partnering should be open to all similar companies interested in providing such materials.

The Commission also believes the Department may allow the pharmaceutical companies to provide speakers for its wellness programs and training for insurance coordinators throughout the state provided the speakers do not identify themselves as representatives of their respective pharmaceutical companies and provided they do not mention or advertise specific products or companies in their presentations. The Department should not appear to endorse a private company or product.

The Commission cautions you, as well, to ascertain that the pharmaceutical companies in fact have no business or regulatory relationships with the Personnel Cabinet and are not attempting

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to influence any discretionary decisions of the Cabinet. If such a relationship exists, then the above advice is not applicable.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: John A. Webb

Enclosure: Advisory Opinion 02-21