

Executive Branch Ethics Commission
ADVISORY OPINION 09-11
March 27, 2009

RE: May the Kentucky Department of Veterans Affairs accept a monetary gift from a resident of the Eastern Kentucky Veterans Center?

DECISION: Yes.

This opinion is issued in response to your February 6, 2009 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). The matter was reviewed by the Commission on March 27, 2009 and the following opinion is issued. You seek advice from the Commission regarding whether the Kentucky Department of Veterans Affairs (KDVA) may accept a monetary gift from a resident of the Eastern Kentucky Veterans Center.

Due to a recent change in U.S. Department of Veterans Affairs rules regarding nursing home care for veterans who are one hundred percent (100%) disabled, Kentucky residents in that category receive skilled nursing care free of charge. One such resident located at the Eastern Kentucky Veterans Center (EKVC), a facility run by KDVA, would like to donate the money that he has saved through this rule change. Specifically, he proposes to donate approximately thirty thousand dollars (\$30,000) for the benefit of EKVC, along with his future monthly benefits from the U.S. Department of Veterans Affairs.

KDVA seeks guidance from the Commission regarding whether it may accept these gifts, and if so, whether the funds may be deposited into the EKVC restricted fund account, which is an account used for operating expenses.

KRS 11A.045(1), relating to the acceptance of gifts, provides the following:

- (1) 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

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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, relating to definitions for KRS Chapter 11A, provides the following:

- (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.

- (14) "Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement.

KRS 11A.045(1) prohibits acceptance of gifts worth more than twenty-five dollars (\$25) from those doing business with, regulated by, seeking grants from, involved in litigation against, lobbying or attempting to influence the actions of the agency, or from any group or association which has as its primary purpose the representation of those persons or businesses. The Commission has previously interpreted KRS 11A.045(1) to apply to state agencies in addition to a public servant, spouse, or dependent child. (See Advisory Opinions 06-19 and 02-48).

The proposed donations from the resident of EKVC would in fact constitute a "gift" for purposes of KRS Chapter 11A, as that term is broadly defined in KRS 11A.010(5). However, the resident of EKVC is not "doing business with" KDVA, as that phrase is defined in KRS 11A.010(14), and the resident does not fit into any of the other categories specifically listed in KRS 11A.045(1) relating to prohibited gifts. Therefore, KDVA may accept the proposed donations from the resident of EKVC. Depositing the funds into the restricted operating account for EKVC would not violate the Code of Ethics, however, there may be other laws or regulations applicable to the restricted operating account and the Commission offers no opinion on any other statutes or regulations that may be applicable.

As advised in Advisory Opinion 08-1 based on concerns raised therein by the KDVA itself, KDVA must ensure that all residents are cared for in a fair and impartial manner. Despite the generosity of this EKVC resident, he must not receive any special treatment as a result. Likewise, care should be taken that no residents ever feel pressured in any way to make such donations to the facility or agency, nor to give to the employees themselves as a result of this advisory opinion.

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Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Gwen R. Pinson

Enc. Advisory Opinion 08-1

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