

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 94-33

May 17, 1994

RE: May Kentucky Tree Farm Committee reward inspectors and committee members with gifts?

DECISION: No

This opinion is in response to your May 2, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 17, 1994, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. The American Tree Farm System is a nation-wide group of landowners who produce continuous crops of trees to supply wood products while simultaneously maintaining the forest aesthetically and for benefit of wildlife. Kentucky's 888 certified Tree Farms are required to be inspected every five years. This service is provided by foresters in the Kentucky Division of Forestry as well as by private and U.S. foresters. State foresters who inspect the tree farms do so on state time during the normal course of their work. The inspections are used as a basis by the Tree Farm Committee in certifying Tree Farms.

The Kentucky Tree Farm Committee, a committee co-sponsored by the Kentucky Forest Industries Association and the Division of Forestry within the Natural Resources and Environmental Protection Cabinet, has developed an incentives program to award inspecting foresters. For each inspection, the forester is awarded points worth \$1 each which can be accumulated and spent on recreational items of their choice.

In addition, the Tree Farm Committee rewards its inspectors and committee members with a gift for outstanding work. Four employees within the Division of Forestry serve on the Tree Farm Committee. Occasionally, the Tree Farm Committee pays travel expenses for the committee members who are conducting business on behalf of the Tree Farm Committee.

You are seeking clarification as to whether these matters are allowable under the Executive Branch Code of Ethics.

KRS 11A.005(1)(a) and (c) provide:

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

(a) A public servant be independent and impartial;

...

(c) A public servant not use public office to obtain private benefits;

and

KRS 11A.040(5) provides:

(5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

The Commission believes employees of the Division of Forestry should not accept incentive

awards or gifts from the Kentucky Tree Farm Committee. Although the individual forester determines to what extent he will participate in the inspection of Tree Farms, the fact that inspections are performed during normal work hours indicate that these inspections are part of the foresters' official duty. As noted above, compensation in addition to state salary is not allowed for performance of an employee's official duty.

State employees are required to be independent and impartial in decision- making positions. Acceptance of such incentives by state employees may create a perception that decisions made may not be objective. The Commission recommends, in order to promote ethical standards, the state foresters and committee members forego gifts from the Tree Farm Committee, a committee of the Kentucky Forest Industries Association which is composed of members over which the employees have some degree of regulation.

State employees who are members of the Tree Farm Committee may be reimbursed for actual expenses incurred while conducting business on behalf of the organization if such travel promotes the goals of the Division of Forestry and is approved by the employee's supervisor.