

**ADVISORY OPINION 94 - 51**

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September 13, 1994

RE:            May employees of a state agency solicit funds and other products for charity from:  
              (1) entities which the agency does not regulate but whose products are transported in trucks regulated by the agency;  
              (2) banks where the agency maintains a checking account?

DECISION:    (1)        Yes, if trucks not owned by the entity.  
              (2)        No

              This opinion is in response to your August 30, 1994, request for an advisory opinion from the Executive Branch Ethics Commission ("Commission"). This matter was reviewed at the September 13, 1994, meeting of the Commission, and the following opinion is issued.

              You state the relevant facts as follows: The Department of Vehicle Regulation within the Transportation Cabinet regulates various aspects of the trucking industry. The Cabinet does not directly regulate businesses such as Wal-Mart, McDonald's, Kroger and Coca-Cola, but it does regulate the trucks used to transport those companies' products. In some cases, the trucks are owned by the business's parent corporation; however, the local outlet has no direct involvement with policies concerning the transportation of goods. You ask if Transportation Cabinet employees may solicit donations for charitable campaigns from the companies.

              The Commission issued Advisory Opinion 93-45 on September 20, 1993, which states that state employees may not accept donations from entities the employee's agency regulates since such acceptance may violate KRS 11A.005(1)(a) in appearance, if not in fact.

              If the parent corporation of the local outlet does not own state-regulated trucks, the Department of Vehicle Regulation employees may solicit charitable contributions from officials of the corporation at any level.

              If the parent corporation does own state-regulated trucks, Department of Vehicle Regulation employees or any Transportation Cabinet employee who supervises Department employees or is involved in the Department's activities should not solicit corporation officials.

              Additionally, you want to know whether it is a violation of KRS Chapter 11A for a state agency to accept donations from a bank where the agency maintains its checking account. In Advisory Opinion 94-21, issued April 19, 1994, the Commission relied on KRS 11A.005(1)(a) and (d) (cited below) in determining that a state agency or its employees may not accept charitable donations from entities who do business with that agency.

- (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;
  - ....
  - (d) The public has confidence in the integrity of its government and public servants.

              A bank's business is, among other things, to secure checking and savings accounts. When a state agency maintains a checking account with a particular bank, it is "doing business with" that financial institution. Therefore, it would be inappropriate and a possible violation of KRS Chapter 11A for the state agency to accept donations from that bank.

In applying its earlier opinions to the above circumstances, the Commission questions whether some charitable fund drives by state employees have lost sight of what we believe should be their primary (and laudable) goal--to raise money for charity from among state employees. Solicitation of businesses for charity should not be the task of executive-branch employees acting under the name of employee groups or state agencies. Such solicitation creates the possibility of real or perceived misuse of the employees' purchasing or regulatory authority over those being solicited.

As it has done in the past, the Commission commends state employees who take part in charitable activities on their own time, and it encourages employees to seek methods of fund raising other than soliciting or accepting donations from those who do business with or are regulated by their agencies.