

ADVISORY OPINION 94-70

December 15, 1994

RE: May a public servant solicit and accept automobiles from an automobile manufacturer for use in an experiment by an association comprised of arson investigators?

DECISION: No

This opinion is in response to your November 23, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 15, 1994, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are a state fire marshal for the Department of Housing, Buildings and Construction, Division of Fire Prevention. You would like to know whether it would be a violation of KRS Chapter 11A for you to write a letter to a local automobile manufacturer and request the company donate at least two automobiles for use in a burn demonstration by an association made up of arson investigators, law enforcement officers and insurance investigators. You are a member of this organization. The purpose of the burn experiment is to educate investigators to detect the difference between arson and accidental fires in vehicles. You state that the vehicles you want donated are units that do not meet the manufacturer's standards at the end of production, thus they are destroyed and never offered for sale.

Your agency has the statutory authority to inspect the building that houses this automobile manufacturer, but does not do so because the manufacturer has never had a problem. You believe the company inspects its own premises. You have the authority to inspect all houses and buildings in Kentucky, but actually inspect a much more limited number. You do not inspect the manufacturer's automobiles.

In Advisory Opinion 93-45, a copy of which is attached, the Commission stated that a conflict of interest would exist if an agency solicits donations from an outside entity which is regulated by the state agency for which the public servant is employed. In light of Advisory Opinion 93-45, and the fact that your agency has regulatory authority, the Commission believes you should not solicit the cars from the automobile manufacturer.

KRS 11A.005(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

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

KRS 11A.020(1) No public servant, by himself or through others, shall knowingly:

(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

...

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family;

Furthermore, the Commission believes the automobile manufacturer may feel pressured by your request for the donation since you head the agency which has the authority to regulate it on other matters. It may be less likely to refuse your request based on your relationship with the Department of Housing, Buildings and Construction. Although it seems as though your purpose in requesting the donated cars is not improper, executive branch employees should not solicit or accept donations from those who do business with or are regulated by the employee's agency.

However, the Commission notes that the donations are for a seminar of the International Association of Arson Investigators and not a state agency. Therefore, the Commission believes it may be permissible for someone else from the association, who is not employed by a state agency which regulates or does business with the manufacturer, to request the donation as long as no reference is made to you or to the fact that other association members are state employees whose agencies may regulate or do business with the manufacturer.