

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 96-12

May 14, 1996

RE: May Transportation Cabinet employees be involved in solicitations of vendors for annual transportation meeting?

DECISION: Yes, within certain limitations.

This opinion is in response to your February 6, 1996, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 19 and May 14, 1996, meetings of the Commission, and the following opinion is issued.

You state the relevant facts as follows. The Kentucky Transportation Cabinet is a member of the Southeastern Association of State Highway and Transportation Officials ("SASHTO"), an organization comprised of state and federal highway and transportation agencies. The purpose of the association is to encourage improvements in all transportation modes and to encourage a balanced transportation system within member states. The business of SASHTO is governed by a board of directors composed of one representative from each member state and one representative from each of the three federal regions of the U.S. Department of Transportation.

Each year, SASHTO sponsors an annual meeting, the time and place of which is designated by the board of directors. Kentucky has been designated to host the SASHTO annual meeting in 1998. As is customary, the Secretary of the Kentucky Transportation Cabinet will serve as President of SASHTO during 1998 because Kentucky is hosting the annual conference that year. As the host state, the Transportation Cabinet and its employees are responsible for making all the arrangements for the meeting. Transportation employees will be involved as part of their official duties. Approximately 1,000 delegates, including representatives from all member states, federal transportation agencies, counties and municipalities, contractors, and other commercial organizations, are expected to attend.

The SASHTO annual meeting expenses will be approximately \$300,000. The Transportation Cabinet is responsible for raising sufficient revenues to cover such expenses. The registration fee charged the attendees does not cover all the meeting expenses. All correspondence, arrangements and finances will be handled under the auspices of SASHTO. Financial records for the meeting will be completely separate from those of the Cabinet and will be reported to the board of directors of SASHTO.

You request the Commission to advise the Cabinet on various issues relating to the annual meeting. Specifically you ask:

1. May the Cabinet, as the SASHTO host, set and collect from all attendees a reasonable registration fee that is in line with previous meetings?

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2. As part of the SASHTO meeting, may an open trade show and/or equipment exposition be held in which a reasonable fee, based on past meetings, is set for each booth or area? Any excess rental fees would be used to cover other meeting expenses.
3. If a trade show/exposition directory is published, may advertisements be sold at a reasonable fee, based on past meetings, and excess revenue used for other meeting expenses?
4. If a daily newsletter is published, may advertisements be sold at a reasonable fee, based on past meetings, and excess fees used to cover other meeting expenses?
5. May SASHTO members and other transportation and non-transportation companies and associations donate door prizes for raffles open to all attendees?
6. May gifts be donated for inclusion in souvenir bags for attendees?
7. May businesses and organizations that do not do business directly with the Cabinet and that do not plan to do business with the Cabinet donate services and/or funds to cover meeting expenses?
8. May an airline, rental car company, etc., offer discounts to attendees?

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You state that the Cabinet may pursue other options in hosting the 1998 SASHTO meeting in order to limit the involvement of Cabinet employees. You ask the following concerning such options:

1. If the finance chairman for the meeting is from another state, and the accounting of all funds is handled by that individual and is reported to the SASHTO Board of Directors, what restrictions, if any, would apply to raising funds to support the meeting? .
2. If another organization volunteers to manage all or some of the SASHTO meeting activities, what restrictions, if any, would apply?
3. If the Cabinet hires an outside organization, such as a university, to manage all or some of the SASHTO meeting, what restrictions, if any, would apply?
4. If another organization, such as the Kentucky Society of Professional Engineers or the Consulting Engineers Council, volunteers to manage the annual golf tournament which provides for competition between the states (all players pay a fee to play), what restrictions, if any, would apply?

KRS 11A.005(1)(a) and (d) 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;

...

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

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Employees of the Transportation Cabinet who, as part of their official duty, will be involved in planning and conducting the 1998 SASHTO meeting are advised not to solicit or accept donations from persons or businesses regulated by or doing business with the Transportation Cabinet. Solicitation or acceptance of donations by employees of the Cabinet from entities which are potential vendors or are regulated by of the Cabinet creates a conflict of interest in appearance, if not in fact, for those employees. See Advisory Opinion 93-56 (a copy of which is enclosed).

Employees may determine the amount and be involved in the collection of a registration fee to be charged those attending the conference. However, such collections of SASHTO funds should not be deposited in a Transportation Cabinet or Commonwealth account. All funds for the SASHTO meeting should be maintained in a separate account outside of state government and all expenses should be paid from the separate SASHTO account.

Vendors may be asked by Cabinet employees to rent booth space for a reasonable fee at an open trade show and/or equipment exposition. However, employees who are involved in the regulation of or selection of vendors for the Transportation Cabinet should not be involved in the solicitation of vendors for the trade show. The Commission believes those employees involved in the solicitation for the trade show should have no responsibilities over those vendors which are solicited. Contacts with potential vendors or entities regulated by the Transportation Cabinet should be limited to mailings only. In order to avoid a conflict of interest, personal contacts should not be made to entities which are potential vendors of the Cabinet or are regulated by the Cabinet. The Commission believes that solicitation by employees for trade show exhibitors who also may have a business or regulatory relationship with the Cabinet is allowable because the vendor receives a benefit for the rental fee paid. Consequently, upon the rental of booth space to vendors, neither SASHTO, the Cabinet, nor the employee is considered to have received a gratuity which would otherwise be prohibited by Advisory Opinions 93-81 and 94-63 (copies of which are enclosed). The funds received from the rental fees should be used for the trade show exposition costs and conference expenses only. The Cabinet should not allow a profit to be made by SASHTO or the Cabinet for rental space sold to entities which do business with or are regulated by the Cabinet.

Similarly, the Commission believes that Transportation staff, not involved in vendor selection or regulation, may solicit for advertisements through mailings from persons or entities, from which they would otherwise be prohibited. A reasonable fee may be charged for the advertisement to be published in a trade show directory or daily newsletter. Again, the funds received should be used for the publication of the directory or newsletter and the conference expenses only.

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Employees may solicit and accept donations for door prizes, souvenir bags, and other expenses of the conference from SASHTO members, transportation companies, and other businesses and associations as long as the member or company giving the donation is not regulated by nor seeking to do business with the Cabinet and the association is not made up of such persons or entities. SASHTO members and companies which are regulated by the Cabinet or are seeking to do business with the Cabinet should not be solicited by employees for such donations because a benefit is not received by the company for such a donation. See Advisory Opinion 94-21 (a copy of which is enclosed).

The Commission concluded in Advisory Opinion 93-88 (a copy of which is enclosed) that hotels and motels could be solicited by a state agency to provide discount rates for state employees on official travel status. Such solicitation was likened to state price contracts which are solicited from vendors. Thus, the Commission believes that airlines and rental car companies may offer discounts to attendees of the conference as long as the discounts offered are comparable to discounts offered to other groups of comparable size.

The ethical prohibitions placed on Cabinet employees concerning fund raising exist regardless as to whether the finance chairman for the conference is from another state or not. However, the Commission has no jurisdiction over an employee of another state, and thus no restrictions would apply to such an employee's fund raising efforts.

The Executive Branch Code of Ethics would not apply to an outside organization, such as a university, which volunteers or is hired by SASHTO to manage all or part of the conference. Thus, the only restrictions that would apply would be to the activities of the Cabinet employees who may be involved with the outside organization or with the parts of the conference not managed by the outside organization. However, if the outside organization solicits donations for the conference from entities which are potential vendors of the Cabinet, employees should not be involved in maintaining or reviewing records of contributions. Any promotional items received by the outside entity should be routed through and provided to attendees in the name of SASHTO. See Advisory Opinion 94-17 (a copy of which is enclosed).

As provided in Advisory Opinion 94-21, Transportation Cabinet employees should not solicit sponsors or accept donations for a golf tournament from entities which do business with the Cabinet or from associations which primarily represent entities that do. Donations from outside consulting firms or professional engineers who do business with the Cabinet create a conflict of interest for those employees organizing the event. However, if the Kentucky Society of Professional Engineers or the Consulting Engineer Council wishes to host a golf tournament, for which a fee will be charged, the Commission finds no problem with notification of such a tournament provided in the SASHTO program literature.

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The Commission cautions the Cabinet and its employees, in its hosting of this annual conference, not to neglect the priorities of the Cabinet, but rather through good management accomplish both objectives.

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BY: Ruth H. Baxter, Chair

Enclosure: Advisory Opinions 93-56, 93-81, 93-88, 94-17, 94-21, and 94-63