

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 96-26
May 14, 1996

RE: May employee accept certificate for a free night's stay at hotel?

DECISION: No.

This opinion is in response to your March 13, 1996, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 14, 1996, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Department for Environmental Protection within the Natural Resources and Environmental Protection Cabinet. As a private citizen, you spent a weekend at a hotel and as such were not on your "official duty" for the state. During your stay, there was a problem with the heating about which you complained to the management of the hotel. Upon checkout, the hotel presented you with a certificate for a free night's lodging for your inconvenience. The certificate expired before you were able to use it and you requested the hotel to renew the certificate. The hotel obliged your request and mailed the new certificate to your work address rather than to your home. Your supervisor conveyed to you that you should not have accepted the certificate because, previously, you had been involved in procuring the services of the hotel for your branch meeting. However, you did not attend the meeting or stay at the hotel as part of your official duty.

You have not used the certificate, but believe you should be able to accept the certificate because you stayed at the hotel as a private citizen. You ask if acceptance of the certificate is a violation of the code of ethics or if you must return the certificate.

Additionally, you have been instructed by your agency not to accept any type of gratuity, including mugs, calendars, pencils, etc. Your departmental policy concerning the acceptance of gifts, which was issued on November 29, 1993, states that such is required in order to comply with KRS Chapter 11A. You believe that KRS Chapter 11A does not prohibit the acceptance of such items and ask for a clarification on this matter.

KRS 11A.005(1)(a), (c) and (d) states:

(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;

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...

(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 states, in pertinent part:

(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; or

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

In Advisory Opinions 93-81 and 94-63, the Commission concluded that a public servant should not accept gratuities, including lodging, from any person or business that does business with the state agency for which the public servant works. However, the Commission recognizes that public servants are also consumers in their private lives, and that they should not have to endure bad service or treatment from businesses. Therefore, the Commission believes that, as a public servant, you are not prohibited from voicing your personal complaint to an entity which may do business with the agency for which you work. In addition, you are not prohibited from accepting a refund or other remuneration as a result of a complaint provided such refund or remuneration would be given to the general public in a similar situation and as long as you have no responsibility as part of your official duty in recommendations or decisions concerning the entity which is offering such remuneration. As a public servant, however, you should take great care not to use your status or official position as leverage in arriving at a resolution of any private dispute over the business' service.

In your situation, because you had previously been involved in an official decision concerning the hotel, you should not have accepted the certificate for the free night's lodging. Acceptance of the certificate created a conflict of interest for you between your private interest and your duties in the public interest because of your responsibilities concerning the selection of

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hotel sites. In addition, the public may view your acceptance of the certificate as using your official position to obtain a privilege for yourself privately. Therefore, the Commission believes you should promptly return the certificate to the hotel to avoid any ethical implications.

If you accepted the certificate because you had no responsibilities concerning the hotel as part of your official duty, but since have been assigned responsibilities concerning hotel site selection, you should return the certificate upon such assignment. Additionally, if you have received and used the certificate or if you have been refused a refund by a business, you should refrain from all decisions relating to that business in your state employment, as your private interest may present a conflict with your public duties, and you should disclose such abstention to your supervisor in accordance with KRS 11A.020(3).

Concerning your second request, although KRS Chapter 11A may not specifically prohibit the acceptance of a certain item, your agency is not prohibited from implementing its own in-house ethics policy which may be more restrictive than KRS Chapter 11A. The Executive Branch Code of Ethics is a minimum standard for your agency to follow.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Ruth H. Baxter, Chair