

ADVISORY OPINION 98-38

September 3, 1998

RE: May the University of Kentucky and the Kentucky Forest Industries Association solicit or accept donations to fund the Master Logger Program administered by the Natural Resources and Environmental Protection Cabinet?

DECISION: No, if donations are from persons or entities that will be regulated by the Master Logger Program.

This opinion is in response to your, August 26, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 3, 1998, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. The 1998 Kentucky Forest Conservation Act provides that by July of 2000, no person shall conduct timber harvesting operations within the Commonwealth unless there is on the site at least one logger in charge of the harvest who has successfully completed the Master Logger Program (the "Program"). The Natural Resources and Environmental Protection Cabinet (the "Cabinet") is responsible for specifying the education and training requirements of the Master Logger Program as developed by the University of Kentucky, the Kentucky Forest Industries Association ("KFIA") and the Division of Forestry within the Cabinet. The KFIA is comprised of companies within the regulated timber industry that the Division of Forestry will regulate in the year 2000.

The Cabinet is also responsible for specifying requirements for continuing education and for establishing a basic fee to cover the cost of the training. The Cabinet has established a basic fee of \$50 per person for enrollment in the Program. The \$50 fee is not sufficient to establish and maintain the training of master loggers, and the Program will need additional sources of funds. The Cabinet has agreed not to increase the fee to prevent a hardship on Kentucky's loggers. The General Assembly did not budget additional funds to support the training program. The Cabinet will establish the minimum requirements for the Program, support grants to help the Program, and provide staff support to the classes. However, in order for the Program to be viable, additional outside grant funds or other financial support must be provided.

You ask whether there are any prohibitions under the Executive Branch Code of Ethics against either the University or KFIA soliciting or accepting contributions to fund the Program. You believe that, although there are grants and like-kind support available to help establish and maintain the training of master loggers, as a practical matter, support for the Program would come from the same community that is subject to the regulation by the Cabinet. However, Cabinet employees would not be involved in soliciting or accepting funds for the Program, or in maintaining records of contributions.

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.

The Commission opined in Advisory Opinion 93-56 (a copy of which is enclosed), regarding the Transportation Cabinet's anti-litter program, that solicitation by the Transportation Cabinet of potential vendors creates a conflict of interest and thus is prohibited. The Commission recommended that the solicitation and record-keeping of funds for the anti-litter program be turned over to the private sector. Consequently, the Commission believes that the Cabinet and its employees are prohibited soliciting funds for the Program if such solicitation will be of the same community that will be regulated by the Division of Forestry.

Although the Commission has opined in several advisory opinions that university employees are not subject to the Executive Branch Code of Ethics and thus are not prohibited from solicitation as employees of the Cabinet are, the Commission believes that individuals or entities that are solicited to donate for the implementation of the Program and who also will be regulated by the Cabinet may feel undue pressure to contribute even if the solicitation is by the University or KFIA members. Although the record-keeping of contributions will not be handled *by the employees of the Cabinet, the fact that the donations will be used to fund a program that includes regulation of those asked to donate creates a public perception that may harm the public's confidence in state government. Therefore, the Commission advises that those individuals and entities that are or will be regulated by the Cabinet not be solicited to donate to the Program.*

The Commission does not prohibit solicitation of firms or individuals who are not or will not be subject to regulation by the Cabinet.

Enclosures: AO 93-56