

Executive Branch Ethics Commission
ADVISORY OPINION 11-04
July 11, 2011

GIFT EXCEPTION NO. 2011-2

RE: May the Department of Criminal Justice Training accept firearm training simulation machines from associations that represent cities and counties?

DECISION: Yes.

This opinion is issued in response to your May 19, 2011, request for an Advisory Opinion from the Executive Branch Ethics Commission (“Commission”). This matter was reviewed at the July 11, 2011, meeting of the Commission and the following opinion is issued.

According to your request, the Department of Criminal Justice Training (the “Department”), within the Justice Cabinet, in accordance with its duties as established in KRS 15A.070, provides basic and in-service training for approximately 11,000 students each year, including city and county police officers, sheriffs, deputy sheriffs, university police, airport police, law enforcement telecommunicators, and coroners. Training is also provided for officers charged with water enforcement, motor vehicle enforcement, and alcoholic beverage control.

Training in the use of firearms is a primary component of law enforcement basic training and is the subject of many of the in-service training courses offered by the Department. Additionally, KRS 15.383 was enacted during the 2005 Regular Session of the General Assembly and requires all certified peace officers to annually qualify in marksmanship with a firearm.

An association of 400 Kentucky cities and municipalities that provides resources, advocacy, and assistance to its members, including liability insurance coverage for Kentucky cities and their police departments, along with an association of 120 Kentucky counties that does the same for its members, recently purchased for the benefit of their members new firearms training simulators. Due to the purchase of these new MILO brand machines, the associations wish to dispose of three old MILO brand machines and have offered them to the Department through gift, loan, or sale (for \$1.00). This is virtually identical to what occurred in 2006, when the association of cities and

municipalities offered FATS brand firearms training simulators that were being replaced by the association, and were simply going to be scrapped by the FATS company, to the Department. The Commission granted the Department a gift exemption so that the Department could accept the FATS machines. See Advisory Opinion 06-25. The associations are now replacing the MILO machines they acquired in 2006 with new MILO machines and the older machines, if not donated to the Department, will be scrapped by the manufacturer. Two of the units could be used immediately to replace existing malfunctioning and nonfunctioning units at the Department while the third would be retained as a backup unit.

You indicate that these old MILO firearms training simulators, being newer than the Department's FATS machines, would be a great improvement for the officers that attend firearms training at the Department. You add that the Department, due to the statewide budget problems, does not have the funds necessary to purchase new training simulators and is experiencing difficulty in repairing the currently owned machines.

While the Department does not regulate the associations, it does have some regulatory enforcement authority over individual cities and counties which the associations primarily represent. Pursuant to KRS 15.450, the Justice Cabinet Secretary has delegated to the Department the responsibility for determining which local units of government are eligible to share in a monetary supplement for local law enforcement officers funded by the Kentucky Law Enforcement Foundation Program Fund (the "Fund"). The Department is authorized to withhold or terminate payments to any local unit that does not comply with the requirements of the Fund. Such requirements include minimum educational requirements for potential officers, initial training for new officers, and annual continuing education and training for officers.

In the past, the Department also has entered into Memoranda of Agreement with the association of cities and municipalities for the provision of training and other services, but such agreements do not constitute a business relationship. The associations have supported many of the new law enforcement training proposals made by the Department and the Kentucky Law Enforcement Council that were ultimately enacted into law. The Department and the associations have not always agreed on changes to police training requirements, but regardless of any disagreement, the Department has always proceeded with its mission as established by KRS 15A.070 and its leadership. The associations are not registered to lobby the Department and have never sought to influence the direction or actions of the Department.

KRS 11A.045(1) provides the following:

No public servant, his spouse, or dependent child knowingly shall accept any gifts or gratuities, including travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five dollars (\$25) in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

It is your opinion that the associations, whose memberships are made up of Kentucky cities and counties, have as their primary purpose the representation of cities, municipalities, and counties which are regulated by the Department. For this reason, you request an exemption from the gift prohibition in KRS 11A.045(1), stated above.

In previously issued advisory opinions, the Commission concluded, based on the provisions of KRS 11A.045(1), that state agencies, like individual public servants, are prohibited from accepting gifts from persons or businesses doing business with, regulated by, or seeking to influence the actions of the state agency. The same would be true of any group or association which has as its primary purpose the representation of those persons or businesses. Based on the information you provided and the relevant statutes, the Commission agrees with your assessment that the Department has some regulatory authority over the member cities and counties that the associations represent. Thus, the only question that needs to be answered is whether the authorization of an exemption from the restrictions contained in KRS 11A.045(1) would create an appearance of impropriety.

As stated above, the Commission previously addressed the Department's nearly identical request for a gift exception in Advisory Opinion 06-25. In that opinion the Commission discussed how it had addressed a similar request in Advisory Opinion 05-30, in which an exception was granted allowing the Kentucky Horse Racing Authority ("Authority") to accept fingerprinting machines donated to it by professional organizations. While the Commission determined that the Authority did have a business relationship with one of the professional organizations, it was only because of the Authority's membership in the professional organization. The Commission granted an exception because it was of the opinion that no actual conflict or appearance of impropriety would be created by a state agency's acceptance of a donation from a professional organization when the only relationship between the agency and the

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organization or its members is created by payment of membership fees to a professional organization that is unique to the agency and serves the mission of the agency.

In Advisory Opinion 06-25, the Commission concluded that the situation presented therein by the Department, which was virtually the same as the situation now presented, differed from the Authority's situation in that the Department, due to the Fund, regulated the cities and municipalities that the association involved represented. However, because the regulatory relationship the Department had was with the individual cities and municipalities, and not directly with the association, and because the association had no obvious incentive to attempt to influence the Department regarding the compliance of individual cities with the Fund requirements, and thus no appearance of impropriety would be created, the Commission granted the request for an exemption to allow the Department to accept the FATS machines from the association.

The Commission sees the situation no differently now. The Department regulates the cities, municipalities, and counties that the associations represent. However, because the regulatory relationship the Department has is with individual cities, municipalities, and counties, and not directly with the associations, and because the associations have no obvious incentive to attempt to influence the Department regarding the compliance of individual cities, municipalities, and counties with the Fund requirements, and thus no appearance of impropriety will be created, the Commission grants the request for an exemption to allow the Department to accept the old MILO machines from the associations.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Ronald L. Green

Enclosures: Advisory Opinion 06-25

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