

Executive Branch Ethics Commission
ADVISORY OPINION 11-05
September 19, 2011

RE: May the Secretary of State accept, as an exception to the gifts rule provided for in KRS 11A.045(1), a gift worth up to \$500 from the Kentucky League of Cities for service as the previous president of the KLC prior to her appointment as Secretary of State?

DECISION: No.

This opinion is issued in response to your August 26, 2011 request for an exemption to KRS 11A.045(1) from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 19, 2011 meeting of the Commission and the following opinion is issued.

You provide relevant facts as follows. The Kentucky League of Cities ("KLC") is governed by an Executive Board comprised of elected and non-elected city officials, which is chaired by a president. The Executive Board officers are elected annually at the KLC conference in the fall. All officers, including the president, serve voluntarily. The president leads the Executive Board as it makes crucial decisions for the organization, which include setting policies for staff, developing and overseeing KLC programs and services, adopting an annual budget, overseeing the executive director, and serving as spokesperson before the state legislature and other groups regarding KLC's position on key issues that may have an effect on cities. The president represents the league, its member cities, and city governments in general, all while continuing to serve as an elected official in his or her own community.

For the past fifteen years, the KLC has presented a gift to the outgoing president at the annual KLC conference during the President's Banquet in appreciation of the outgoing president's service to KLC. The gift is typically valued up to \$500 and has some personal significance for the recipient. The next annual KLC conference will be held in Lexington, Kentucky, from October 4 through 7, 2011.

In July of 2010, Elaine Walker became the president of the KLC Executive Board, while serving as the mayor of Bowling Green, Kentucky. Before completing her term as KLC president, Mayor Walker was sworn in as Secretary of State on January 29, 2011, to complete the remainder of the term vacated by Trey Grayson. Secretary Walker had to step down as KLC president at that time.

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KLC would like to present Secretary Walker with the customary gift presented to outgoing presidents at its annual conference in October.

KLC maintains a relationship with the Secretary of State's office by working in conjunction with the Secretary on supporting or opposing legislation that affect the interests of both agencies, participating in and supporting programs that benefit the interests of both agencies, and entering into memoranda of agreement with the Secretary of State's office on various projects. The KLC and the Secretary of State currently do not have any ongoing memoranda of agreement or any contracts in effect at this time. KLC also has annual corporate filings with the Secretary of State and interacts with the land office on behalf of KLC members regarding mapping and other reporting information required of cities. KLC may seek to influence the Secretary of State's policy on annexation filings and other requirements that affect KLC's members. KLC is concerned that the forgoing creates the public impression that KLC does business with the Secretary of State in the sense contemplated by KRS 11A.045(1).

Since KLC is concerned that the public may perceive that it does business with the Secretary of State's office, the KLC is seeking a gift exception on behalf of the Secretary of State to avoid any appearance of impropriety when it presents Secretary Walker with the gift presented to outgoing presidents at its annual conference in October.

The relevant statute is KRS 11A.045(1), which provides:

(1) 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.

KRS 11A.010(5) further provides:

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is

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received; "gift" does not include gifts from family members, campaign contributions, or door prizes available to the public;

The Commission's long-standing interpretation of KRS 11A.045(1) prohibits state agencies (in addition to state employees) from accepting gifts, as defined above, from persons or businesses with which they do business. See, for example, Advisory Opinion 02-2 (a copy of which is enclosed), in which the Commission concluded that an agency should not accept donations of items and services from persons or businesses that were seeking to do business with that agency. While the Commission has granted exceptions to this general rule in the past, where such exemptions would not create an appearance of impropriety, these exceptions have been rare and have generally been granted due to certain unique circumstances that were involved.

The Commission believes that an appearance of impropriety would be created by granting your request on behalf of the Secretary of State for an exception in this instance for the following reasons: 1) while the gift would be presented to Elaine Walker for her past service as the president of the Executive Board of the KLC, she is currently serving as Secretary of State; 2) the Secretary of State's office has an ongoing and active business relationship with the KLC; 3) the amount of the proposed gift in question appears excessive to the Commission; and 4) the granting of such an exemption would tend to create an appearance of impropriety.

For these reasons, the Commission denies your request for an exception to KRS 11A.045(1).

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Ronald L. Green

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