

Executive Branch Ethics Commission  
**ADVISORY OPINION 12-04**  
March 19, 2012

**RE:** May an agency or public servant accept travel expenses, or reimbursement of travel expenses, in whole or in part, from any arm, division, affiliate, subsidiary, franchise, or other segment of a business with which the agency does business, either directly or indirectly, or which could be attempting to influence the actions of the agency or public servant?

**DECISION:** No.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own initiative as provided for under KRS 11A.110(1). This matter was reviewed at the March 19, 2012, meeting of the Commission and the following opinion is issued.

As the result of a recent investigation, the Commission wishes to provide guidance to executive branch agencies and public servants regarding the acceptance of travel expenses and other costs associated with public servants attending conferences and other functions during the performance of their official duties. Of specific concern is whether an agency or public servant may accept travel expenses, or reimbursement of travel expenses, from the self-described "philanthropic arm" of a business with which the agency does business. It is the Commission's opinion that travel expenses may not be accepted, in whole or in part, by an employee or an agency from any "arm," division, affiliate, subsidiary, franchise, or any other segment of a business with which the agency does business, either directly or indirectly, or which could be attempting to influence the actions of the agency or public servant.

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

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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 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 they regulate or with which they do business. See, for example, Advisory Opinion 02-2 (a copy of which is attached), 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 has previously addressed issues pertaining to the acceptance of travel expenses on many occasions, and believes that it has been quite clear and consistent in its advice. For example, in Advisory Opinion 05-27 (a copy of which is attached), the Commission, referencing multiple advisory opinions, reiterated that KRS Chapter 11A, the Executive Branch Code of Ethics, did not prohibit employees from accepting travel expense reimbursement from a professional association or organization, **provided the agency for which the employee worked did not do business with nor regulate the association or organization or the members of the association or organization.**

Likewise, in Advisory Opinion 04-42 (a copy of which is attached), the Commission reviewed a question it received pertaining, in part, to whether the Chairman of the Public Service Commission could accept reimbursement for the costs of attending a program sponsored by an association that represented regulated entities. The Commission, again referencing multiple advisory opinions, opined that since KRS 11A.045(1) states that travel expenses in excess of \$25 in a calendar year may **not** be accepted "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

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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,” and the national utility association represented the interests of local energy companies regulated by the PSC, the Chairman should not accept travel expense reimbursement for transportation, lodging, and meals from the utility association.<sup>1</sup>

The Commission would also like to call attention to Advisory Opinion 00-61 (a copy of which is attached), in which the Department of Education asked whether it could accept complimentary travel and hotel accommodations for some of its employees from a vendor of internet learning products in order for the Department employees to attend a “Leaders Forum” convened by that vendor in Washington, D.C. The Commission clearly stated that KRS 11A.045(1) prohibited the Department of Education employees from accepting the travel and hotel accommodations from the vendor. In doing so, the Commission did not question the value of the “Leaders Forum” or in any way indicate that the Department of Education employees should not attend the forum, but rather merely said that the employees’ travel could not be paid for by the vendor.

In such instances where, in the opinion of the agency, the proposed travel fits within the scope of the public servant’s official duties, the costs associated with the trip would, of course, be the responsibility of the agency, rather than the employee, to bear. Therefore, should an outside person or business be offering to pay for any or all costs associated with the trip, it is the duty of the agency to assure that the person or business in question is not a source from which the agency is prohibited from receiving such a “gift”. If the person or business does not do

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<sup>1</sup> Advisory Opinion 04-42 also contains references to previous advisory opinions that provided guidance relating to conference attendance. The Commission has reason to believe this guidance needs to be reemphasized herein. In Advisory Opinion 04-8, the Commission stated that a waiver of a registration fee for a presenter at a professional conference to attend additional sessions of the conference would constitute a gift to the presenter. In Advisory Opinion 04-29, the Commission stated that although it thought it was worthwhile for employees to interact with licensees in order to train and provide information to them, and that generally the presenter should not have to pay a fee to attend a function to present such information, other gratuities such as meals and entertainment at the function should not be accepted. In Advisory Opinion 04-36, the Commission further stated that if a program presenter wishes to attend other functions of an annual convention, in addition to the session for which he is a presenter, either he or his agency should pay any registration fee or other fees required. Such guidance has been repeated in more recent decisions such as Advisory Opinions 05-38 and 08-5, attached hereto. Failure by any public servant to heed such clear and consistent guidance will not be tolerated by the Commission.

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business with, is not regulated by, is not seeking grants from, is not involved in litigation against, or is not lobbying or attempting to influence the actions of the agency, or representing such persons or businesses, then the agency may accept the travel expenses on behalf of its employees. Otherwise, the travel expenses may not be accepted, absent the granting of an exception by the Commission. In determining whether travel expenses may be accepted, the agency must take care to assure the gift's source is not a division, subsidiary, or "arm" of a person or business from which the agency may not accept gifts, and must take care to assure that the ultimate source of the gift is also not such a person or business. Passing funds through a third-party, no matter how well-intentioned, would not necessarily eliminate this concern.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Chair: Ronald L. Green

Attachments:

Advisory Opinion 00-61  
Advisory Opinion 02-2  
Advisory Opinion 04-42  
Advisory Opinion 05-27  
Advisory Opinion 05-38  
Advisory Opinion 08-5

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