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Executive Branch Ethics Commission  
**ADVISORY OPINION 13-01**  
January 28, 2013

**GIFTS EXCEPTION NO. 2013-1**

**RE:** May Kentucky Retirement Systems employee whose wife has been diagnosed with lymphoma accept donations from vendors of the agency?

**DECISION:** Yes.

This opinion is issued in response to the Kentucky Retirement Systems' (the "KRS") January 14, 2013, request for an exemption to KRS 11A.045(1) from the Executive Branch Ethics Commission (the "Commission") on behalf of an employee. The request was reviewed at the January 28, 2013, meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows: The employee in question is a Business Analyst III for the Kentucky Retirement Systems. In this role he has worked with outside vendors on the implementation of the upgrade of the KRS's computer systems. His job as a Business Analyst is to act as a liaison between business units and information technology staff and vendors. He is not in a management position where he has any control over the selection of vendors used nor any supervision or control of these vendors. While working on the upgrade of the KRS's computer systems, the employee worked extensively with some members of the staff of a certain vendor (the "Vendor"). Some employees of the Vendor will still be performing work at KRS until February 2013. However, the upgrade project is in the post-implementation phase and many of the Vendor's employees have been moved to projects for other customers. The contract for services from the Vendor provides for up to three years of post-implementation support. The employee is no longer working directly with anyone from the Vendor.

The employee is on intermittent leave from employment to assist his wife with traveling to and from chemotherapy treatment. His wife is on leave from her employment due to side effects from the chemotherapy treatment. When the employee's wife was diagnosed with

cancer, many friends sought to assist the employee and his family by providing meals or gift cards for meals. Several of the friends seeking to provide assistance include employees of the Vendor. At this time, it does not appear that any of the people seeking to send him gift cards are in management roles at the Vendor. It is not known if anyone at any higher level of authority may seek to provide assistance in the future.

You state that KRS has not solicited any donations of any type for the employee or his family. However, the employee himself, and his supervisor, have asked whether he can accept meals or gift cards from the Vendor's employees. KRS therefore, on the employee's behalf, requests an exception from the gift restrictions contained in the Executive Branch Code of Ethics (the "Code") in order for him to accept such gifts. He has not accepted any meals or gift cards from the Vendor's employees at this time, but is waiting for a response to this request from the Commission.

KRS 11A.045(1) 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.** (Emphasis added).

KRS 11A.010(5) further provides:

"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;

A similar situation was addressed in Advisory Opinion 07-4. In that opinion, an employee of the Transportation Cabinet ("Cabinet") had been diagnosed with leukemia and was on extended leave from his position. His office had asked for donations for him and his family from within the Cabinet and also wished to accept donations from contractors of the Cabinet. The employee worked with several highway contractors as a part of his job duties, and many of

Executive Branch Ethics Commission  
**ADVISORY OPINION 13-01**  
January 28, 2013  
Page Three

those contractors had offered to make a donation. The Commission authorized an exception to allow the employee to accept donations from highway contractors who did business with the Cabinet and with whom the employee had direct contact as part of his official duty. A similar situation was given the same consideration in Advisory Opinion 05-37.

As in those advisory opinions, the Commission continues to believe that its gift exception authorization was created for circumstances such as the one described above, and it believes that

no appearance of impropriety will be created in this situation should your employee be permitted to accept gifts from the Vendor's employees. In support of this belief is the fact that the employee has no control over the selection of vendors nor does he supervise or control them after they are selected. The Commission therefore grants your request for an exception pursuant to its authority contained in KRS 11A.045(1) in order for your employee to accept donations from employees of the Vendor as well as employees of other vendors similarly situated, if any.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Chair: W. David Denton

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