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Executive Branch Ethics Commission
ADVISORY OPINION 14-01
March 21, 2014

RE: May the Personnel Cabinet expand the scope of its “State Employee Discounts” website to include discounts from additional private entities?

DECISION: Yes, within certain parameters.

This opinion is issued in response to your request for an advisory opinion from the Executive Branch Ethics Commission (the “Commission”) regarding contemplated notification of state employees with respect to discounts offered by private entities.

You state that the Personnel Cabinet (the “Cabinet”) operates a website entitled “State Employee Discounts.” Currently the majority of state discounts listed on this website are discounts available to state employees as a result of a state contract. However, two of the discounts listed (Cincinnati Reds and Great Wolf Lodge) are not the result of a state contract, but have historically been available to state employees.

The Cabinet is interested in expanding the scope of this website to include discounts from other private entities as well. Specifically the Cabinet is interested in establishing a comprehensive website that serves a conduit of information to notify state employees of discounts available to them based upon their status as state employees. Private entities that wish to include a discount on the website would notify the Cabinet. The Cabinet would review the discount offering for appropriateness and post on the webpage if acceptable.

You indicate that the Cabinet is mindful that such a website could raise ethical considerations relating to acceptance of gifts, conflicts of interest, endorsement, and solicitation. Therefore the Cabinet has conducted its own legal research and intends to structure its webpage to avoid and minimize any ethical implications. You correctly state that past Commission opinions indicate that merely notifying employees of the availability of discounts is acceptable. See Advisory Opinions 07-6, 06-21, and 01-1. As a result, the Cabinet’s website will merely notify employees of available discounts, and contain a disclaimer stating that the Commonwealth does not publicize, promote, or endorse any of the private entities. Further, the Cabinet intends to require any discount posted on its website to be offered to all state employees in order to minimize the chance that acceptance of a discount would constitute the unlawful acceptance of a gift pursuant to KRS 11A.045. See Advisory Opinions 09-19, 04-38, 01-1, and 93-88.

ADVISORY OPINION 14-01

March 21, 2014

Page 2 of 4

Lastly, the website will contain a disclaimer informing employees that they are responsible for ensuring that acceptance of a discount would not constitute a conflict of interest or an unlawful acceptance of a gift pursuant to KRS 11A.045. See Advisory Opinions 06-21 and 01-1. You provided copies of the disclaimers that will be added to the Cabinet website as well as copies of the information the Cabinet will provide any private entity interested in including its discount on the website.

You add that the establishment of an employee discount website is not an uncommon practice by public employers. Specifically, other states with similar ethical considerations have similar websites, including Colorado, Indiana, New Jersey, and Virginia. The Cabinet seeks to expand its current website similar to these states in order to effectively communicate available discounts in this bleak economic time when other employee benefits previously available have been diminished.

The relevant statutory provisions are as follows:

KRS 11A.005(1) provides:

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;
- (b) Government policy and decisions be made through the established processes of government;
- (c) A public servant not use public office to obtain private benefits; and
- (d) The public has confidence in the integrity of its government and public servants.

Pursuant to KRS 11A.010(9), "public servant" means:

- (a) The Governor;
- (b) The Lieutenant Governor;
- (c) The Secretary of State;
- (d) The Attorney General;
- (e) The Treasurer;
- (f) The Commissioner of Agriculture;
- (g) The Auditor of Public Accounts; and
- (h) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

Additionally, KRS 11A.020(1)(d) provides:

No public servant, by himself or through others, shall knowingly:

...

- (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Regarding the acceptance of gifts, KRS 11A.045(1) provides:

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.

“Gift” is defined in KRS 11A.010(5) as:

"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;

As the issues raised by the Cabinet’s proposal to expand its webpage for state employee discounts have been addressed somewhat piecemeal in the advisory opinions you referenced in your request, the Commission will attempt to consolidate the issues herein as they pertain to public servants (i.e., employees of the executive branch) over whom the Commission has jurisdiction. As stated in Advisory Opinion 09-19, vendor discounts offered to executive branch employees may be accepted and are not considered “gifts” if: 1) the discount is offered to all executive branch employees, 2) the discount is not limited to employees of a particular agency, and 3) the vendor offers a similar discount to employees of its other customers. While notification to public servants that these discounts exist is acceptable, the Cabinet must be careful not to otherwise publicize, promote, or endorse the vendor. See Advisory Opinions 06-21 and 07-6.

If the discount does not involve a vendor of a public servant’s agency, then there is no issue with the public servant accepting the discount, assuming no other relationship exists that would preclude the acceptance of a “gift” by the public servant. If a discount involves a vendor and is not offered to all public servants, or limited to employees of a particular agency or employee classification, then the public servant may only accept a discount value of no more than \$25 per source per year, as addressed in Advisory Opinion 04-38.

Regarding the specifics of the Cabinet’s proposal, the Commission has reviewed both the disclaimer informing public servants that they are responsible for ensuring that acceptance of a discount would not constitute a conflict of interest or an unlawful acceptance of a gift pursuant to KRS 11A.045, as well as the information that the Cabinet intends to provide to any private entity interested in including its discount on the Cabinet’s website. The Commission finds the proposed disclaimer for public servants,

Executive Branch Ethics Commission

ADVISORY OPINION 14-01

March 21, 2014

Page 4 of 4

attached hereto, satisfactory. The Commission finds the information to be provided to private entities, also attached hereto, satisfactory as well. Any subsequent changes by the Cabinet to the language of either should be reviewed by staff of the Commission prior to implementation by the Cabinet.

While the Commission still believes, as stated in Advisory Opinions 01-1 and 06-21, that including vendor discounts in the state's competitive bid process is the cleanest way to handle the question of discounts for public servants, the Cabinet's proposal to expand the scope of its "State Employee Discount" website, within the parameters established, is a commendable effort to assist such employees and acceptable under the Executive Branch Code of Ethics for public servants.

The Commission does advise you to contact the Finance and Administration Cabinet in order to assure that the proposed expanded website, which will include discounts available to public servants as a result of a state contract as well as ones that are not the result of a state contract, creates no procurement-related concerns either.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: W. David Denton

Attachments