



COMMONWEALTH OF KENTUCKY

EXECUTIVE BRANCH ETHICS COMMISSION

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Executive Branch Ethics Commission

ADVISORY OPINION 15-02

July 24, 2015

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RE: May an Executive Branch Agency, in accordance with its policy of developing viable programs to be used in the private sector, assign a non-profit entity a program and marketing collateral that were developed by the Agency and expanded for use by a non-profit entity?

DECISION: Yes.

This opinion is issued in response to your June 30, 2015 request and your July 14, 2015 amended request for an advisory opinion from the Executive Branch Ethics Commission (the Commission). The matter was reviewed by the Commission at its meeting on July 24, 2015, and the following opinion is issued.

According to your June 30, 2015 letter, in 2013, the Kentucky Department of Agriculture (the KDA) created a program entitled "Homegrown by Heroes" (the Program) to assist Kentucky military veteran farmers. The Program garnered immediate national appeal, and, on Veteran's Day of 2013, the KDA entered into a Memorandum of Understanding (MOU) with a national non-profit entity, the Farmer Veteran Coalition (the Coalition), to expand the reach of the program to other states in an effort to afford military veteran farmers across the country the opportunity to utilize its marketing benefits. You have provided a copy of the MOU to the Commission for review, which expires December 31, 2015.

In your amended request from July 14, 2015, you clarify that you are requesting the Commission to provide guidance to the KDA on whether the assignment of the Program may be given to a non-profit program in general, not necessarily the Coalition.

The Program, through the Coalition, now operates in more than 10 states outside of Kentucky. The Commissioner and the KDA desire to assign the program and its marketing collateral to a non-profit entity at the end of the MOU. Furthermore, this transfer fulfills the KDA's policy authorized by KRS 260.030 to "[p]romote and develop markets for Kentucky agricultural products, assist in setting up farm cooperatives, and assist in coordinating feasibility studies, loans, grants, and funding activities for producers and cooperatives." You attest that the version of the program which applies to Kentucky will remain for the exclusive use of KDA.

The relevant statutory provisions of the Executive Branch Code of Ethics (the Ethics Code) are as follows:

KRS 11A.005(1)(a) provides:

- (1) 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;

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

- (1) 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.

Finally, KRS 11A.055(1) provides:

- (1) Any provision of KRS Chapter 11A to the contrary notwithstanding, a state agency or a public servant may raise funds, either individually or as a department or agency, for a charitable nonprofit organization granted a tax exemption by the Internal Revenue Service under Section 501c of the Internal Revenue Code without violating the provisions of this chapter. Raising of funds shall include but not be limited to holding events for the benefit of the charitable organization, contacting potential donors, providing prizes, and engaging in other forms of fundraising and providing the funds thus raised to the charitable organization.

The Ethics Code requires that state officials be independent and impartial in carrying out their duties for the Commonwealth. This aspect of the Ethics Code is paramount in considering such partnering between state agencies and private entities. State officials have an inherent duty to avoid any appearance of favoritism. Another factor to consider is the benefit the partnership will provide for the citizens of the Commonwealth and the benefit for the state's economic development. In Advisory Opinion 09-30, a copy of which is included, the Commission concluded that an agency could enter into an agreement with a non-profit private entity in a program that would benefit the entire Commonwealth or would promote economic development or tourism in the state. Therefore, the KDA may appropriately enter into agreements with non-profit entities for the use of the Program.

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KRS 11A.055 allows public servants and state agencies to engage in fundraising efforts for non-profit organizations. This statute does not limit the form the fundraising may take, but states “[r]aising of funds shall include but not be limited to holding events for the benefit of the charitable organization, contacting potential donors, providing prizes, and engaging in other forms of fundraising and providing the funds thus raised to the charitable organization.” The Commission’s decision in Advisory Opinion 13-03, a copy of which is included, which applied KRS 11A.055, did not find any ethical conflict for the Kentucky Historical Society, a state agency, and its Foundation, a non-profit 501(C)(3) entity, to enter into an agreement that established an exchange of services between the two organizations and provided for collaborative fundraising events. This same principal can be applied to the present situation. KDA’s intent to assign the Program and marketing collateral to a non-profit entity could be perceived as another form of fundraising by a state agency on behalf of a non-profit entity; therefore, the conduct would be permissible pursuant to KRS 11A.055.

The Commission’s decision herein is limited to the facts presented and premised upon the fact that this matter involves a non-profit 501(C)(3) entity, the mission of which is in line with the policies of the KDA and the statutory framework under which it has authority. The Commission’s jurisdiction extends only to the implications of the conduct presented under the purview of the Ethics Code pursuant to KRS Chapter 11A.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: W. David Denton

Attachments: Advisory Opinion 09-30
Advisory Opinion 13-03