



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
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Executive Branch Ethics Commission
ADVISORY OPINION 16-01
January 11, 2016

GIFTS EXCEPTION NO. 2016-1

RE: May an employee of the Auditor of Public Accounts accept baby shower gifts from employees of a county office that is regulated by the office of the Auditor of Public Accounts?

DECISION: Yes, provided the gifts are reasonable in value.

This opinion is issued in response to your November 18, 2015 request for an exemption to KRS 11A.045(1) from the Executive Branch Ethics Commission (the "Commission") on behalf of an employee of Auditor of Public Accounts (APA) who serves as an auditor. This matter was reviewed at the January 11, 2016 meeting of the Commission and the following opinion/exemption is issued.

You state the relevant facts as follows: A new employee of the APA, who began work with your office on November 16, 2015, is an expectant mother and a resident of Floyd County, Kentucky. As an APA auditor, the employee will be conducting audits of counties and county officials in several Eastern Kentucky counties, but will not be conducting audits of Floyd County officials, in accordance with the APA's policy that an APA auditor shall not work on any audits relating to the county where the auditor resides. The APA is required by KRS 43.070 to annually audit Kentucky's county sheriffs' offices, including the Floyd County Sheriff's office. APA auditors, other than the employee in question, will be performing the Floyd County Sheriff's audits. The employee's mother is an employee of the Floyd County Sheriff's office. She wishes to celebrate her daughter's expected birth of her grandchild by organizing a baby shower, which is scheduled to take place on January 16, 2016. Employees of the Floyd County Sheriff's office are planning to attend the baby shower and wish to give gifts to the employee as

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is customary on such an occasion. The likelihood that the \$25 gift limit, set by KRS 11A.045(1), will be exceeded is high.

You ask whether the employee is considered a “public servant,” as defined in KRS 11A.010(9)(h), since her 6-month probationary period will not end until May 15, 2016. You further request, if the Commission considers her a public servant prior to May 15, 2016, then you request for the Commission to issue a gift exemption on her behalf. You also state that, as the Ethics Officer for the APA, it is your opinion that the grant of a gift exemption in this instance will not create an appearance of impropriety.

KRS 11A.010(9)(h) provides that a public servant means “[a]ll employees in the executive branch including officers as defined in subsection (7) of this section and merit employees.” The language of this provision that states that “all employees” are included in the definition of a public servant would indicate that regardless of probationary status, the employee in question is a public servant covered by all of the provisions of the Ethics Code.

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.

Based on the language above, the employee is prohibited from accepting gifts with a value of over \$25 from any person or business doing business with, regulated by, seeking grants from, involved in litigation against, or lobbying or attempting to influence the actions of her state agency (APA) or any other agency over which she would have authority to supervise, if any. Nevertheless, the Commission grants an exception, pursuant to KRS 11A.045(1), for the APA employee to accept customary baby shower gifts from the Floyd County Sheriff’s Office provided such gifts are reasonable in value and the APA’s policies are followed when the Floyd County Sheriff’s Office is audited by the APA.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Vice-Chair: William G. Francis