



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
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Executive Branch Ethics Commission
ADVISORY OPINION 19-04
July 16, 2019

EXCEPTION NO. 2019-2

RE:

(1) Will the Executive Branch Ethics Commission grant an exception to KRS 11A.040(5) to all employees of Department of Criminal Justice Training ("DOCJT") as part of the DOCJT program to reward its employees who go beyond their official duties to provide exceptional performance?

DECISION:

(1) Yes, within limitations.

This opinion is issued in response to your June 3, 2019 request for an exemption to KRS 11A.040(5) from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 16, 2019 meeting of the Commission and the following opinion/exemption is issued.

On behalf of the Department of Criminal Justice Training ("DOCJT" or Department) you have requested that the Commission grant a request for exemption from KRS 11A.040(5). DOCJT is seeking an exemption to be allowed to reward certain employees who receive an agency-specific contact for exceptional service.

You state the relevant facts as follows:

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DOCJT is seeking to reward employees who have achieved excellence or had accomplishments that have helped to advance the mission of the Department. To be nominated for the reward, an employee must demonstrate conduct that goes above and beyond the normal scope of duties. The awards will be issued quarterly and all employees who are nominated will be eligible for the quarterly award. The award winner will be chosen randomly from the pool of nominated employees at the conclusion of each quarter. The winner will receive a prize, which may include a weekend voucher for a state park or tickets to a sporting event. The Department has created a nomination form that may be submitted by Department employees and must be approved by an immediate supervisor. All money spent for the awards will come from internal Department funds and will not be provided by an outside entity.

The Commission has reviewed such rewards programs in the past. When doing so, the Commission has considered both KRS 11A.040(5) and KRS 11A.045(1) collectively when considering awards programs. KRS 11A.040(5) specifically states that:

A public servant shall not knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

“Compensation” is defined in KRS 11A.010(3) as “any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another[.]” Thus, the rewards that are provided through TAH’s Program do fall within the definition of “compensation” as used in the Executive Branch Code of Ethics. Furthermore, KRS 11A.045(1) states as follows:

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. This subsection shall not apply to:

- (a) Activities involving sponsorships, naming rights, or similar honoraria granted under KRS 45A.097; or
- (b) Individuals traveling on their own while involved in activities related to KRS 45A.097.

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“Gift” is defined in KRS 11A.010(5) as a "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, the waiver of a registration fee for a presenter at a conference or training described in KRS 45A.097(5), or door prizes available to the public[.]” As such, the Commission must ensure that TAH is not violating KRS 11A.045(1) in providing such gifts to its employees.

The Commission has previously addressed the idea of incentives or awards for employee accomplishments in several advisory opinions. In Advisory Opinion 00-51, the Commission stated that:

. . .the Commission believes that the committee may award prizes for exceptional service to executive branch employees, in addition to their compensation provided by law, but such awards should not have a value of greater than \$25 each.

Although such awards may appear to be compensation for performance of official duties, the Commission does not believe that small token awards, with a value of less than \$25, rise to the level of “compensation” and tend not to create a conflict for the employee The Commission sees the benefit of such awards in promoting improvement in the performance of Commonwealth employees.

In Advisory Opinion 12-01, the Kentucky Housing Corporation (“KHC”) was given permission by the Commission to implement an employee incentive program which would provide KHC employees with cash awards for offering suggestions which improve KHC productivity and services, as long as KHC added a disqualifier stating that any suggestion that “falls within the scope of the duties of the suggester” would be ineligible for a cash award, so that employees would not be rewarded just for doing their jobs.

In Advisory Opinion 15-01, the Commission granted an exemption to the Kentucky Department of Fish & Wildlife Resources (KDFWR) to KRS 11A.040(5) to permit KDFWR to present an award to employees who are selected for the Wildlife Division’s Employee Recognition Program. In this program, KDFWR rewards employees who have “achieved excellence” or had accomplishments that have “helped to advance the Wildlife Division.” The value of the rewards given can be from \$25 to \$150. Furthermore, all money spent for these awards come from internal KDFWR funds and are not provided by an outside entity.

In Advisory Opinion 17-08, the Commission reviewed a safety program for the Kentucky Department for Veterans Affairs. This program was similar to the one proposed by TAH in that the value of some of the awards being granted exceeded \$25. As such, the Commission followed

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the premise in Advisory Opinion 12-07, recognizing that KRS 11A.040(5) provides the Commission with the authority to give prior approval for a public servant to accept compensation other than that provided by law for performance of official duties, the Commission will review and consider granting its approval of certain specific programs or awards that recognize an employee for performance that could be said “to *exceed* or to go *above and beyond* his official duties.”

The Commission ultimately determined that KDVA’s safety program was an example of such a worthy program in line with the programs reviewed for KHC and KDFWR. The awards included criteria that indicated the potential recipients were to have exceeded or gone above and beyond their official duties. Therefore, the Commission determines that the program you have outlined falls in line with the programs previously approved by the Commission.

Finally, the Commission approved a similar program for the Tourism, Arts, & Heritage Cabinet in Advisory Opinion 19-03. The Commission anticipates more agencies will follow suit in requesting such exceptions.

As long as the funds continue to be generated from within the Department, and entities prohibited by KRS 11A.045(1) do not contribute to the funds used to purchase the awards, DOCJT may reward those employees who demonstrate excellence and go above and beyond what is required by their regular duties. Therefore, the Commission hereby grants an exemption to the restrictions found in KRS 11A.040(5) to allow DOCJT employees to accept the awards proposed for rewards without violating KRS 11A.040(5) or KRS 11A.045(1).

In issuing this advisory opinion, the only determination being made by the Commission is whether the DOCJT proposed program is acceptable under the Executive Branch Code of Ethics. It is making no determination regarding other programs, which must be addressed on a case-by-case basis.

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: Christopher L. Thacker