



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
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Executive Branch Ethics Commission
ADVISORY OPINION 19-03
May 14, 2019

EXCEPTION NO. 2019-1

RE:

(1) Will the Executive Branch Ethics Commission grant an exception to KRS 11A.040(5) to all employees of Tourism, Arts & Heritage Cabinet ("TAH" or Cabinet) as part of the Cabinet's Core Values Awards program for employees who go beyond their official duties to provide exceptional customer service?

DECISION:

(1) Yes, within limitations.

This opinion is issued in response to your April 26, 2019 request for an exemption to KRS 11A.040(5) from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 14, 2019 meeting of the Commission and the following opinion/exemption is issued.

On behalf of the Tourism, Arts & Heritage Cabinet ("TAH" or Cabinet) you have requested that the Commission grant a request for exemption from KRS 11A.040(5). The TAH is seeking an exemption to be allowed to present certain employees with awards through its Core Values Awards program ("Program").

You state the relevant facts as follows:

TAH created the program to recognize employees of the Cabinet. The program strives to have an awards ceremony on a quarterly basis. Agency leaders will nominate employees who exceed or go beyond their official duties to demonstrate the Cabinet's four core values: servant leadership, outstanding customer service, sustained excellence, and spirit of innovation. The Office of the Secretary will review the nominations and select four employees, one in each category. The selected employees will be recognized at an awards ceremony and luncheon held

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at one of the Cabinet's facilities. A Cabinet agency will cater the lunch. The recipients will receive lunch, a voucher for a free night's stay at a state park of their choice (valued at \$45 to \$120 depending on the park and the time of year), and a commemorative coin (valued at less than \$25). The recipient will have their photo displayed in the lobby of the Cabinet. The awards will be funded within the Cabinet internally.

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.

"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

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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:

An employee is prohibited by KRS 11A.045(1) from accepting an award that exceeds a value of \$25 from a vendor of his agency. Similarly, 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 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

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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.

As long as the funds continue to be generated from within the Cabinet, and entities prohibited by KRS 11A.045(1) do not contribute to the funds used by the Program, TAH may reward those employees who demonstrate excellence in customer service 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 TAH employees to accept the awards proposed for the Program 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 TAH’s 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