



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
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MISTY DUGGER JUDY
GENERAL COUNSEL

#3 FOUNTAIN PLACE
FRANKFORT, KY 40601
(502) 564-7954
FAX: (502)-564-2686

Executive Branch Ethics Commission
ADVISORY OPINION 17-08
July 17, 2017

EXCEPTION NO. 2017-4

RE:

(1) Will the Executive Branch Ethics Commission grant an exception to KRS 11A.040(5) to all employees of nursing facilities of the Kentucky Department of Veterans Affairs ("KDVA") to accept monetary rewards for demonstrating exceptional safety awareness from the KDVA Safety Committee's at those facilities?

DECISION:

(1) Yes, within limitations.

This opinion is issued in response to your June 29, 2017 request for an exemption to KRS 11A.040(5) from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 17, 2017 meeting of the Commission and the following opinion/exemption is issued.

On behalf of the Kentucky Department for Veterans Affairs ("KDVA") you have requested that the Commission grant a request for exemption from KRS 11A.040(5). The KDVA is seeking an exemption to be allowed to present certain employees with awards through its in-house safety program ("Safety Program").

You state the relevant facts as follows: Two years ago, the KDVA instituted the Safety Program for its state veterans nursing home facilities to promote safety awareness within the institutions. The Safety Program is run by a committee ("Safety Committee") that is comprised of employees of the veterans nursing homes. The Safety Committees hold fundraisers to support the Safety Programs in each facility. The Safety Committees raise funds by selling tickets to chili or hot dog lunches held at the facilities during normal duty hours. Employees may opt to

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eat at these events instead of eating in the dining facility or going out to eat lunch. The Safety Committees are given leeway by KDVA to determine how to spend the funds raised. The Safety Programs, buttressed by the fundraising efforts, have raised sufficient funds to promote safety in the workplace, which has resulted in fewer mishaps per year and has yielded a greater savings for KDVA and the Commonwealth.

The remainder of the funds raised are used to provide monthly rewards to employees who answer a safety test and get all of the answers correct. The rewards never exceed \$25 per employee and are provided to those employees who show exceptional safety awareness. Additionally, once or twice a year, one of the nursing facilities holds “safety fairs,” during which employees who have demonstrated exceptional safety are chosen to receive special prizes, such as a weekend voucher to a state park or a trip to Gatlinburg. This particular nursing facility has the fewest number of “safety write-ups” in part due to how it is running its Safety Program.

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 KDVA’s Safety 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.

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“Gift” is defined in KRS 11A.010(5) as a “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 such, the Commission must ensure that KDVA 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 regard to the Safety Program you describe, KRS 11A.045(1) is not an issue as the awards will neither be provided nor paid for by outside sources. Rather, internal KDVA resources and funds raised through the lunches sold to its own employees will be used.

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However, as the value of some of the awards will exceed \$25, for the purposes of KRS 11A.040(5), additional review is required. Furthermore, as stated 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.”

It is the opinion of the Commission that the Safety Program as you describe in your request is an example of such a worthy program in line with the programs reviewed for KHC and KDFWR. The awards include criteria that indicate the potential recipients have exceeded or gone above and beyond their official duties. The program also adds a certain level of randomness in that employees who meet the high standards of safety compete during the safety fair for an equal chance of receiving rewards greater than the \$25 monthly reward.

As long as the funds continue to be generated from within, and entities prohibited by KRS 11A.045(1) do not contribute to the funds used by the Safety Program, the Safety Committees can continue to reward those employees who demonstrate safety excellence 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 KDVA employees to accept the awards proposed for the Safety 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 KDVA Safety 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.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: William G. Francis