



COMMONWEALTH OF KENTUCKY

EXECUTIVE BRANCH ETHICS COMMISSION

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Executive Branch Ethics Commission
ADVISORY OPINION 20-01
March 31, 2020

EXCEPTION NO. 2020-1

RE:

Will the Executive Branch Ethics Commission grant an exception to KRS 11A.040(5) to all employees of the Department of Corrections ("DOC" or "Department") as part of the Department's proposed program for employees who go beyond their official duties to provide exceptional service?

DECISION:

Yes, within limitations.

This opinion is issued in response to your January 31, 2020 request for an exemption to KRS 11A.040(5) from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 31, 2020 meeting of the Commission and the following opinion/exemption is issued.

On behalf of the Department of Corrections ("DOC" or "Department") you have requested that the Commission grant a request for exemption from KRS 11A.040(5). The DOC is seeking an exemption to be allowed to present certain employees with awards through a proposed program that would reward the Department's employees who "exhibit outstanding job performance, an innovative approach to their job, willingness to pursue/achieve personal development, leadership ability, and overall good character."

You indicate that the program would allow supervisors from each area of the Department to nominate employees that demonstrate conduct that goes beyond the normal duties for their position. The nominations forms will be reviewed by the Department's upper management and a winner will be selected by the Commissioner. The funds used to reward the selected employees will be the personal funds of the Department's executive staff.

ADVISORY OPINION 20-01

March 31, 2020

2 | Page

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 Department’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 door prizes available to the public[.]” As such, the Commission must ensure that the Department 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. See Advisory Opinion 00-51 (Cabinet for Families and Children, now Cabinet for Health and Family Services), Advisory

Executive Branch Ethics Commission

ADVISORY OPINION 20-01

March 31, 2020

3 | Page

Opinion 12-01 (Kentucky Housing Corporation), Advisory Opinion 12-07 (Kentucky Department of Fish & Wildlife Resources), Advisory Opinion 15-01 (Kentucky Department of Fish & Wildlife Resources), Advisory Opinion 16-03 (Personnel Cabinet), Advisory Opinion 17-08 (Kentucky Department for Veterans Affairs), Advisory Opinion 19-03 (Tourism, Arts & Heritage Cabinet), and Advisory Opinion 19-04 (Department for Criminal Justice Training).

In each of these opinions, the Commission recognized 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. As such, the Commission reviews these matters to determine whether to grant its approval of certain specific programs or awards only when the programs recognize an employee for performance that could be said “to *exceed* or to *go above and beyond* his [or her] official duties.”

In each case, the Commission ultimately determined that these agency’s programs were examples of worthy programs because the programs 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 Department of Corrections program you have outlined falls in line with the programs previously approved by the Commission.

You have indicated that the funds for the program would come from the DOC’s own executive staff. As such, these individuals are not considered a prohibited source as determined by KRS 11A.045(1). As long as the funds used to support the program do not come from entities from which a public servant would be prohibited from accepting a gift pursuant to KRS 11A.045(1), then DOC may reward those employees who demonstrate excellence by going 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 DOC 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 DOC’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

Christopher L. Thacker

Christopher L. Thacker (Mar 31, 2020)

By Chair: Christopher L. Thacker