



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION

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Executive Branch Ethics Commission
ADVISORY OPINION 22-02
January 19, 2022

EXCEPTION NO. 2022-1

RE: The Kentucky Transportation Cabinet (KYTC) requests an exemption to KRS 11A.040(5) for the employees of KYTC to participate in the Safety Recognition Program.

DECISION: The Executive Branch Ethics Commission grants the exemption pursuant to KRS 11A.040(5).

This opinion is issued in response to your December 20, 2021 request for an exemption to KRS 11A.040(5) from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the January 19, 2022 meeting of the Commission and the following opinion/exemption is issued.

According to your December 20, 2021 request on behalf of the Kentucky Transportation Cabinet ("KYTC"), you are requesting that the Commission grant a request for exemption from KRS 11A.040(5) employees of the KYTC to participate in the following program:

KYTC Secretary's Office of Safety's Safety Recognition Program will have 3 awards – **Secretary's Excellence in Safety Award** (given annually to one district), **KYTC District Safety Excellence Award** (given annually to the top 3 crews of each district), and **District Safety Recognition Award** (given quarterly to an employee in each district). These awards will be given based on five components – Leadership Involvement, Hazard Recognition and Controls, Employee Engagement, Evaluation and Improvement, and Training and Competence. This Recognition Program will only reward employees who have met these components and who also exceed their normal job responsibilities resulting in a safer work environment for all KYTC staff.

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We would like to acknowledge the recipients of these awards with an item that will be purchased through the Adventure Promotions current master agreement and will include a KYTC Safety logo. These items may be a t-shirt, hoodie, jacket, tumbler or cooler, with a cost between \$15- \$25.

The **District Safety Recognition Award** is given out quarterly to an employee in each district. Each employee that receives this recognition throughout the year will be entered into a drawing at the end of the year for a two-night stay at any Kentucky State Park. We will either purchase this stay or possibly see if Parks would be interested in donating.

As part of the recognition for **KYTC District Safety Excellence Award** the Secretary's office of Safety will have a presentation/safety meeting that will include a working lunch for each of the 12 districts. This meal would most likely be catered from a local restaurant.

This Recognition Program will be funded with KYTC Road funds that are allotted to each of the 12 districts each year for District Operations.

As support for the program, the KYTC Cabinet Secretary provides the following justification:

The Secretary's Office of Safety would like to implement this Safety Recognition Program for each of the twelve districts within KYTC. The hardworking employees of KYTC roadcrews work through all elements of weather while also trying to maintain the utmost importance of safety. This Safety Recognition Program would create teamwork, lead to mutual respect between management and employees, and improve communication. A Safety Recognition program for safe behavior would provide KYTC workers with items to recognize them for reporting injuries, or hazards and would encourage worker involvement regarding safety. The Secretary's Office of Safety mission statement is *"To eliminate employee injuries by creating and communicating a culture of safety through servant leadership that encourages everyone at KYTC to make safe choices"*. We would like to show our employees that we appreciate their efforts for a safe working environment, and to acknowledge their efforts for making safe choices. We hope that this type of recognition would make each employee feel appreciated, as well as create a workplace where each worker looks out for the other, because at the end of the day everyone wants to go home happy, healthy, and SAFE.

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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.” As such, any awards and recognition that will be given to the recipients in KYTC’s Program 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.

However, KRS 11A.045(1) is not applicable to the above scenario because you have indicated that the funds for the program will come from KYTC’s Road Funds. If 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 KYTC may supply the funds to support the program without implicating that statute.

As for the application of KRS 11A.040(5), the Commission has previously approved for state agencies to provide prizes, awards, and recognition to public servants as long as no conflict of interest would be created by the agency’s awarding of rewards and the program is established to recognize employees who act above and beyond the dictates of their ordinary duties for the state. There appears to be no conflict of interest that would be created from the KYTC recognition

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program and the intent and purpose of the program is to recognize employees who exceed their normal job responsibilities resulting from a safer work environment. Therefore, the Commission hereby grants an exemption to the restrictions found in KRS 11A.040(5) to allow the winning public servant to accept the prize proposed for the program without violating KRS 11A.040(5).

In issuing this exception, the only determination being made by the Commission is whether KYTC'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: Judge Roger L. Crittenden (Ret.)