



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION

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EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 23-01
MARCH 15, 2023

GIFT EXCEPTION No. 2023-1

RE: The Office of the Secretary of the Tourism, Arts, and Heritage Cabinet requests an exemption to KRS 11A.040(5) and KRS 11A.045(1), for the employees of Jenny Wiley State Park to accept a gift from the non-profit “Friends of Jenny Wiley,” for their exemplary service during and after the historic flooding in eastern Kentucky.

DECISION: The Executive Branch Ethics Commission grants the exemption pursuant to KRS 11A.040(5) and KRS 11A.045(1).

This opinion is issued in response to your request for an exemption, pursuant to KRS 11A.040(5) and KRS 11A.045(1), from the Executive Branch Ethics Commission (Commission). This matter was reviewed at the March 15, 2023 meeting of the Commission and the following opinion/exemption is issued.

According to your inquiry of January 18, 2023, you request that the Commission grant an exemption from KRS 11A.040(5) and KRS 11A.045(1) so that employees at Jenny Wiley State Park who worked on flood relief efforts may accept honoraria from the non-profit support group, “Friends of Jenny Wiley.” In support of this exemption, you provide the following justification:

“Jenny Wiley employees provided aide, comfort, shelter, food, and went above and beyond from the day after the floods hit in Eastern KY in July 2022. They worked extra hours daily and were responsible for feeding and caring for their fellow citizens who had lost almost everything due to this natural disaster. The Department of Parks primary mission is to be a part of the hospitality industry and provide recreation and activities to all of the Commonwealth’s citizens, however, it is rare that a park is at capacity for months on end in their cottages and lodge rooms and providing 3 hot meals a day. That is exactly what they did for these flood victims. Some of the staff there lost their homes as well in Floyd and surrounding counties. Staff pitched in and worked outside of their normal job duties to see that these people were safe, secure, and well taken care of during what had to be the lowest point of some of their lives. At the climax, there were 177 people housed in the flood relief covering 49 lodge rooms and 17 cottages. In addition, there are approximately 25 KYEM Travel Trailer guests staying in the Jenny Wiley Campground with over 60 people. Food relief was provided to those individuals.”

In his January 4, 2023, State of the Commonwealth Address, Governor Beshear also recognized the herculean efforts of these state park employees saying as follows:

“Tonight, we are joined by Trinity Shepherd, who runs Jenny Wiley State Resort Park, along with some of his co-workers. Trinity and his team, some of whom were heavily impacted by the flooding, put their own needs aside and helped our families who lost everything. Trinity, we want to thank you and every Parks employee for caring for our fellow Kentuckians time and time again.”

Terming themselves “as a group of local volunteers who frequently engage our community in the park,” the “Friends of Jenny Wiley” is a non-profit organization that provides support for the Jenny Wiley State Park. In recognition of the flood relief efforts of the park employees, the Friends of Jenny Wiley presented employees with checks in the amount of \$100 and cards stating:

“We want you to know that we recognize the extra effort y’all have put forth during these unprecedented times. Many have extended generosity beyond measure (and rightfully so) to the flood victims. FOJW and a grateful community.”

The Commission has reviewed exemption requests for rewards for exemplary service in the past and has considered both KRS 11A.040(5) and KRS 11A.045(1), when doing so. 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 or her 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 herself, or another.” As such any monetary awards that will be given

to the park employees 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 the appearance of impropriety. This subsection shall not apply to:

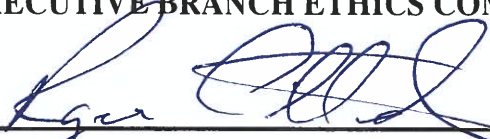
- (a) Activities involving sponsorships, naming rights, or similar honoraria granted under KRS 45A.097; or
- (b) Individuals traveling on their own while involved in activities related to KRS 45A.097.

However, KRS 11A.045(1) is inapplicable to the present scenario because you have indicated that the funds do not come from a source prohibited by that statute. The non-profit “Friends of Jenny Wiley” is a community support group for the state park and is not a prohibited source, as set out in KRS 11A.045. Since the funds do not come from an entity from which a public servant would be prohibited from accepting a gift pursuant to KRS 11A.045(1), that statute is not implicated.

As for the application of KRS 11A.040(5), the Commission has previously approved awards to public servants as long as no conflict of interest would be created by the award and the award recognizes employees who act above and beyond the dictates of their usual duties for the state. Here, while the agency is not funding the award to its employees, a non-profit, non-prohibited group has chosen to recognize park employees for their exemplary efforts. It is beyond cavil that the heroic efforts of these fine public servants during the recovery from the historic flooding in eastern Kentucky far exceeded the requirements of their official duties. There appears to be no conflict of interest that would be created from the Friends of Jenny Wiley’s recognition of state employees who so exceeded their job responsibilities in coming to the service of their fellow Kentuckians during the recovery from the historic flooding in eastern Kentucky. Therefore, under the facts presented, the Commission hereby grants an exemption to the restrictions found in KRS 11A.040(5) and KRS 11A.045(1), to allow these Jenny Wiley State Park employees to accept the honoraria from the non-profit, Friends of Jenny Wiley.

In issuing this exemption, the only determination being made by the Commission is whether this one-time gift by a non-profit group in response to a historic disaster in our Commonwealth is acceptable under the Executive Branch Code of Ethics. It is making no determination regarding other such gifts, which must be addressed on a case-by-case basis.

EXECUTIVE BRANCH ETHICS COMMISSION

A handwritten signature in blue ink, appearing to read "Roger L. Crittenden", written over a horizontal line.

By Chair: Judge Roger L. Crittenden (Ret.)