



**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

Matthew G. Bevin
Governor

#1 Sportsman's Lane
Frankfort, Kentucky 40601
Phone (502) 564-3400
1-800-858-1549
Fax (502) 564-0506
fw.ky.gov

Regina Stivers
Deputy Secretary

Don Parkinson
Secretary

Rich Storm
Commissioner

February 25, 2019

Hon. Mike Harmon
Auditor of Public Accounts
Commonwealth of Kentucky
209 St. Clair Street
Frankfort, Ky. 40601

RE: Examination of Certain Operations and Financial Activity

Dear Mr. Harmon:

The Tourism, Arts and Heritage Cabinet (TAH) requested an examination of the Kentucky Department of Fish and Wildlife Resources in January 2018 to ensure the appropriate fiscal processes were in place. TAH was given a very short two-day window to give a public response to the December 18 examination; we appreciate the opportunity to respond to the audit in its entirety.

As the new commissioner, I am pleased to report that KDFWR staff has reviewed the eleven findings and the 42 recommendations. Most of the recommendations have already been addressed, or were in the process of being corrected prior to receipt of the report. My management team is almost completely new since the examination request over a year ago. The current team is developing new strategic plan to guide the agency's mission, keeping transparency and accountability at the forefront. All policies and procedures for the department are under review. It is my personal goal to ensure that every member of the department is able to promote the agency in keeping with the highest of standards for public service.

I look forward to working with your office in the future.

Best Regards,

A handwritten signature in blue ink that reads "Rich Storm".

Rich Storm, Commissioner



Finding 1: KDFWR Failed to Create an Operating Environment That Promotes Transparency and Accountability of Public Funds

KDFWR Response:

The Kentucky Department of Fish and Wildlife Resources (KDFWR) agrees that the department is funded by the public, and therefore is held to the same transparency standards as other governmental agencies. KDFWR has undergone significant changes in department leadership since the Auditor of Public Accounts initiated the special examination in early 2018. New management includes the following: five of nine commission members, one commissioner, one of two deputy commissioners, and five of seven division directors. KDFWR's employees are passionate about the mission of conserving and enhancing fish and wildlife resources, and providing opportunity for hunting, fishing, trapping, boating and other wildlife-related activities. The revenues generated by sportsmen and sportswomen are restricted, public funds; these funds are integral to the department's mission.

KDFWR is moving forward; the current management has developed goals and is continuing to develop strategic processes to ensure that transparency and public accountability guide the department's philosophy and govern its actions. KDFWR will also be more cognizant of public perception, the email taglines regarding the source of funds were removed from all department emails.

Finding 2: KDFWR Improperly Accounted For and Monitored the Stream Mitigation Fund

KDFWR Response:

Finding 2 has been corrected per the APA recommendation, all administrative charges for stream mitigation are made directly to the Mitigation Fund. All fiscal year 2019 transactions (beginning July 1, 2019) are charged to the Mitigation Fund established in KRS 150.255.

KDFWR met the Army Corp of Engineers in January 2019 to discuss the audit findings. The Corp has agreed to review the departments' corrective measure for annual transfers made since the inception of the current agreement (December 1, 2011 to June 30, 2018). The correcting entry for previous fiscal years will be made once confirmation from the Corp is received.

The "Nongame Fish and Wildlife Fund", also mentioned in the finding, was established in June 2017 in response to a previous audit finding for the income tax check-off. Before establishment of that fund, the tax check-off funding was delineated by a special revenue source code within the Game and Fish Fund because expenditures related to "nongame" wildlife is supported by the game and fish fund (as established in KRS 150.150). All of the receipts from the check off funding since fiscal year 2007 were moved into the newly created fund.

Finding 3: KDFWR Did Not Maintain an Effective Line of Separation from the Kentucky Fish and Wildlife Foundation

KDFWR Response:

The administrative agreement with the Foundation ended June 30, 2018 and there will be no future agreements to support the general administration of the Foundation. All of the foundation's expenditures will continue to be approved by their fourteen-member board. The Foundation's mission "to support the efforts of the Salato Wildlife Education Center, conservation education programs for Kentucky youth, and the acquisition of land and wetlands for wildlife habitat" is crucial; the Foundation awards hundreds of scholarships to children every year and provides updates to both the camps and the Salato Education Center.

KDFWR agrees that future collaborative projects, such as the MDWTSG meeting or Salato upgrades, must have agreements in place to promote transparency on how each entity's resources are used to ensure no procurement laws are broken. KDFWR will not provide general "seed" money to future meetings or conferences without outlining the specific use of those funds within those agreements to ensure that purchases are within procurement laws.

Finding 4: KDFWR Did Not Adhere to the Model Procurement Code and State Procurement Policies

KDFWR Response:

KDFWR will comply with the Kentucky Model Procurement Code, FAPs, and agency developed policies. KDFWR will follow or update policies to create an adequate evaluation process to combine procurements when appropriate. KDFWR will continue to consult with the Finance and Administration Cabinet to ensure compliance. Each procurement will correctly cite the authority used.

The requisitions for storage containers originated at different times by different divisions (separate budget units) and the individuals' explanations corroborated others' recollections. The only way the purchases could have been artificially split is if each of the divisions had been asked to make the purchases so they would have appeared to be below the small purchase amount. FAP 111.55.00 says that, "Procurement requirements shall not be parceled, split, divided or scheduled over a period of time in order to subvert the intent of this procedure." KDFWR investigated this finding with each division, and in our determination, no evidence was found to support that explanation. KDFWR takes very seriously the finding put forth in this audit and denies split purchasing and/or intentionally circumventing procurement requirements. KDFWR understands why the APA chose these transactions for a split purchase.

Gravel is budgeted annually for the entire state's needs on wildlife management areas. Gravel was initially purchased for a parking area located in a wetland area in one fiscal year, and then, because the parking lot was heavily utilized, the access road leading to the new lot also required gravel (four

months later, in a different fiscal year). The purchase order for the road contained an administrative error; the purchase order was copied from the original document and the language was not updated to reflect gravel for the "drive" instead of the "parking area". KDFWR is working to assure transparency and avoid documentation errors that miscommunicate the intent of the procurement.

Finding 5: KDFWR Compensated "Volunteers" with Pre-Paid Debit Cards Jeopardizing Federal Grant Funds

KDFWR Response:

In response to this special examination, the United States Department of the Interior, Fish and Wildlife Service (FWS) was contacted for guidance regarding the eligibility of recognition of volunteers under the Wildlife and Sport Fish Restoration (WSFR) program grants. FWS acknowledged similar programs as eligible under 50 CFR §80.50(b) and (c) for at least fifteen years. FWS reviewed Kentucky's statutes and regulations and agreed that KDFWR was, "clearly operating within legislatively authorized limits when expending license revenues on activities related to hunter education." A copy of the Jan. 9, 2019 correspondence is attached, as well as copies of each year's approval from the Finance and Administration Cabinet. In the future, KDFWR will ensure policies and procedures are included with the grant application.

Finding 6: KDFWR Used Public Funds to Cater an Awards Banquet with No Apparent Benefit to the Commonwealth

KDFWR Response:

The volunteer recognition banquets are designed to be an expression of gratitude for volunteer work of those who provide training, staffing and land resources that KDFWR could not provide otherwise, rather than as an incentive. KDFWR consulted with FAC to assure compliance with FAP 120-23-00 verbally, KDFWR will ensure the justification is documented more completely in the future. The public funds that are spent are pennies on the dollar compared to the savings that volunteers afford this agency. KDFWR will also be pursuing sponsorships per KRS 45A.097.

With approximately 94 percent of Kentucky in private ownership, KDFWR relies upon private landowners for wildlife resource management in the state. The department recognizes the landowners who do the most to benefit wildlife species through appropriate habitat management as a token of gratitude for accomplishing the department's mission. Wildlife habitat conditions across the state are improved; recognizing these landowners encourages them and others to continue their efforts. Conservation provisions of the Federal Farm Bill bring approximately \$50 million to Kentucky landowners annually to improve water quality, enhance soil health and improve wildlife habitat. Every year KDFWR also recognizes one employee who works for the Natural Resources Conservation Service (NRCS) for outstanding work with landowners to improve wildlife habitat on private property. The KDFWR employees recognized as part of the Wildlife Division employee awards received approval by the Ethic Commission in Advisory Opinion 15-1 (see attached).

Finding 7: KDFWR Failed to Procure Construction Services According to Laws and Regulations

KDFWR works very closely with the Finance and Administration Cabinet in all areas of procurement and embraces the recommendations made.

- *KDFWR's procurement card/purchasing policies will be updated to include exceptions approved through the FAC (such as the card for master agreement purchase card that has no limits). KDFWR's current policy (3/16/2015) allows capital purchases to be made by procurement card. The policy already allows for approval exceptions for capital expenditures, "All capital construction projects are approved by the Commissioner's office. Once approved, the Director's office in charge of the project shall ensure the appropriateness of the purchases under each capital project." A separate division, the Division of Engineering, Information and Technology, managed the superintendent's house maintenance.*
- *KDFWR's current policy protects against conflicts of interest when the employee making the purchase stands to benefit personally, "Personal Items – No items can be purchased for personal use." The vanity was purchased for the superintendent's required residence and the master agreement vendor was utilized. The project manager authorized the superintendent to purchase the vanity of his choice within certain specifications. Allowing some flexibility (within the project's budget) is no different than allowing an employee to choose among several office chairs for the one that best fits his/her needs. Concerning oversight, all procurement card purchases are approved by a supervisor and unallowable purchases carry penalty up to dismissal.*
- *KDFWR will ensure all vendors receive a written copy of the solicitations in the future.*
- *KDFWR staff will also ensure that FAC, Division of Engineering and Contract Administration (DECA) decisions are either documented from DECA or that any understanding of verbal decisions made are relayed to FAC/DECA.*

Finding 8: The Commission Failed to Hold Recipients of Special Commission Permits Accountable

KDFWR staff presented the Commission with the charitable organization candidates for tags. In the future, the Commission is going to take a proactive approach; before new commission members receive assignments to committees or workgroups, all new commission members shall be trained on the statutory duties, ethics, and responsibilities of the commission.

KDFWR hired an employee on May 1, 2018 whose primary tasks are to coordinate/oversee programmatic functions for the special commission permit. KDFWR will ensure the Commission has full transparency on the entire process and follow the APA's recommendations:

- *Date-stamp applications and ensure only special commission permit applications that are complete and submitted timely are considered (301 KAR 3:100).*
- *Provide all financial reports on the sale of the special commission permits issued for analysis and ensure information reported complies with 301 KAR 3:100 and identify the total funds raised, the expenses related to the sale, and the net profit. A summary of the conservation project, the related expenditures for the project, and a synopsis of the impact the conservation project had on enhancing fish and wildlife activities in the Commonwealth will be provided to the Commission to ensure objectives are being met. The Commission will inquire with the organization concerning any missing or incomplete information.*
- *The Commission will have an opportunity to evaluate all reports and inquire about inconsistent or unreasonable information, such as excessive expenses related to the sale of the special commission permit.*
- *Follow up with organizations that fail to report expenditure activity for a project identified in the application and identify the cause for the failure to report. Financial reports should be requested and evaluated annually until all funds associated with the sale of the permit are used for the intended purpose.*
- *Document the evaluation of each organization requesting a special commission permit, including historical data on the organization's compliance with the requirements of 301 KAR 3:100, past projects, and overall effectiveness and any failure to comply with 301 KAR 3:100 in previous years. This information will be presented to evaluate and determine future recipients of special commission permits.*

Finding 9: KDFWR Failed To Consistently Monitor Contracts and Ensure Payments Were an Effective and Efficient Use of Taxpayer Funds

KDFWR Response:

KDFWR agrees and will, continue to, or immediately comply with all recommendations:

- *Will ensure that all contracts have well defined deliverables and timeline(s) as applicable to enhance monitoring and safeguard against prepayments.*
- *Will properly monitor all contracts*
- *Will avoid prepayment for contracted services*
- *Will comply with laws and regulations, Model Procurement Code, FAPs, and federal requirements.*

Finding 10: KDFWR Received 180 Tickets to Sporting Events and Distributed to Employees

KDFWR Response:

KDFWR will keep a log of tickets and how the tickets were utilized, including the benefit to the department.

Before issuance of this special examination, KDFWR insisted that tickets be removed from the current Louisville Bat contract to ensure there were no future perception issues. Tickets were only used to gain admission/access to the stadium to perform their work duties; after the initial report was received, a memo issued by the Louisville Bats confirmed that we had only received tickets for workers to setup in the main concourse.

KDFWR may actually be missing opportunities to market our mission by not fully utilizing the available tickets to have staff promote its mission. In the future, KDFWR may reinstate broader use of tickets for entry as a venue for public training/outreach. For example, Law Enforcement teaching boating and life jacket safety. Any tickets used will be specifically for working staff and documented as to how they help the mission of KDFWR and benefit the Commonwealth.

Finding 11: KDFWR Lacked Procedures to Determine if Recipients of Federal Awards Were Contractors or Subrecipients, Resulting in Noncompliance with Federal Regulations

KDFWR Response:

KDFWR will develop standard operating procedures to make the determination of a contractor versus a subrecipient. The procedures will comply with federal requirements. KDFWR will include policies that conduct and document adequate monitoring and risk assessment for subrecipients. These procedures will include a checklist and risk assessment for future contracts and we will ensure the SEFA is accurate.



United States Department of the Interior



FISH AND WILDLIFE SERVICE

1875 Century Boulevard
Atlanta, Georgia 30345

In Reply Refer To:
FWS/R4/WSFR

JAN 09 2019

Frank Jemley, Interim Commissioner
Department of Fish and Wildlife Resources
#1 Sportsman's Lane
Frankfort, Kentucky 40601

Dear Mr. Jemley:

This letter is in response your agency's request for guidance regarding the expenditure of license revenue funds on recognition programs for volunteer instructors in the Kentucky Department of Fish and Wildlife Resources (KDFWR) hunter education program, as well as the eligibility of such programs under Wildlife and Sport Fish Restoration (WSFR) program grants.

In accordance with 50 CFR §80.10(c), revenue from hunting and fishing licenses must be:

- (1) Controlled only by the State fish and wildlife agency; and
- (2) Used only for administration of the State fish and wildlife agency, which includes only the functions required to manage the agency and the fish- and wildlife-related resources for which the agency has authority under State law.

KRS 150.025 authorizes KDFWR to promulgate "administrative regulations as to game and fish, including seasons and limits." Under this authority, KDFWR developed the requirement for a hunter education certification course at 301 KAR 2:185. With respect to 50 CFR §80.10(c), KDFWR is clearly operating within legislatively authorized limits when expending license revenues on activities related to hunter education.

Should KDFWR desire to incorporate the existing recognition program under the WSFR hunter education grant award, WSFR would require KDFWR's policies and procedures for implementing its hunter education recognition program be incorporated into the grant award application. WSFR has acknowledged volunteer recognition programs as eligible activities under 50 CFR §80.50(b) and (c) since at least 2004 (WSFR Hunter Education Guide, pages 31-32).

In addition to determining eligibility under regulation, costs in grants submitted to WSFR are reviewed for being reasonable and necessary to the efficient performance of the Federal award, as per 50 CFR §80.82 *What must an agency submit when applying for a project-by-project grant*, 50 CFR §80.56 *How does a proposed project qualify as substantial in character and design*, and 2 CFR §200.404 *Reasonable costs*. Having discussed the existing recognition program with your grant coordinator, WSFR has determined the value of recognition rewards relative to the value of

volunteer services provided is consistent with 2 CFR §200.403 *Factors affecting allowability of costs* and 2 CFR §200.404 *Reasonable costs*.

Copies of this letter have been e-mailed to your WSFR grant coordinators. Please contact me at (404) 679-4154 or Alex Coley at (404) 679-7242 if you have any additional questions.

Sincerely yours,



Michael L. Piccirilli
Chief -Wildlife and Sport Fish Restoration Program



**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

Steven L. Beshear
Governor

#1 Sportsman's Lane
Frankfort, Kentucky 40601
Phone (502) 564-3400
1-800-858-1549
Fax (502) 564-0506
fw.ky.gov

Bob Stewart
Secretary

Gregory K. Johnson
Commissioner

December 8, 2014

Mr. Don Speer, Executive Director
Finance and Administration Cabinet
702 Capitol Avenue, Room 96
Frankfort, Kentucky 40601

Dear Mr. Speer:

This letter is requesting a Competitive Bidding Exception (FAP 111-10-00-12) for the purchase of gift cards for volunteer hunter education instructors. As outlined in 2013 statutory state audit, finding 2013-10, the department has ceased purchasing gift cards for volunteer hunter education instructors using a Pro-Card. The department sought a special exemption to allow Pro-Card usage for these volunteer cards, but was denied. After researching potential vendors and solutions, the selected Visa gift card vendor, Omni Card LLC, is the only one found that will invoice us and accept checks from the department keeping us compliant with the audit finding.

Hunter education is required for all Kentucky hunters born after January 1, 1975. The Kentucky Department of Fish and Wildlife Resources (KDFWR) receives federal funds to administer the hunter education program. To ensure we can deliver the required number of hunter education classes, KDFWR uses volunteer instructors to deliver the majority of hunter education programs in Kentucky. Volunteer instructor hours are used as part of the required state match for federal aid. Volunteer hours are valued at \$20 per hour towards state match of federal dollars. In 2015, Kentucky is eligible to receive in excess of \$2,000,000 in federal aid for the hunter education program. Like many other states, Kentucky provides incentives in the form of a gift card to these volunteers. A volunteer receives the equivalent of \$1 hour for every hour worked. Volunteer instructors can accrue credit and cash out for a gift card between \$50 and \$450. Our current policy and database does not allow volunteers to cash out for more than \$450 in a calendar year. The hunter education program is reimbursed by

Don Speer
Page 2
December 8, 2014

federal grant money awarded by the United States Fish and Wildlife Service (USFWS). Our federal coordinator has stated that the outright cash payment of volunteers would jeopardize those grant dollars for the program, but gift cards do not place those dollars in jeopardy.

The annual amount spent of these gift cards varies per year but can reach or exceed \$20,000. Our current projection is \$15,000 for the fiscal year. Arguably, the hours spent by volunteers are a cost effective way to deliver the hunter education requirement to our constituents. If this exception request is approved, the contract will be renewed on an annual basis.

Thanks for your consideration in this matter.



Sincerely,

A handwritten signature in black ink that reads "Charles O. Bush, Jr." in a cursive style.

Charles O. Bush, Jr.
Deputy Commissioner



**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

Matthew G. Bevin
Governor

Don Parkinson
Secretary

#1 Sportsman's Lane
Frankfort, Kentucky 40601
Phone (502) 564-3400
1-800-858-1549
Fax (502) 564-0506
fw.ky.gov
October 13, 2016

Regina Stivers
Deputy Secretary

Gregory K. Johnson
Commissioner

Ms. Joan Graham, Executive Director
Finance and Administration Cabinet
702 Capitol Avenue, Room 96
Frankfort, Kentucky 40601

Dear Ms. Graham:

The purpose of this letter is to request a Competitive Bidding Exception (FAP 111-10-00-12) for the purchase of gift cards for volunteer hunter education instructors. As outlined in our 2013 statutory state audit, finding 2013-10, the KY Department of Fish and Wildlife Resources (KDFWR) has ceased purchasing gift cards for volunteer hunter education instructors using a Pro-Card. The KDFWR sought a special exemption to allow Pro-Card usage for these volunteer cards, but was denied. After researching potential vendors and solutions, Omni Card LLC, was the only Visa gift card vendor found that will invoice and accept checks from the Department, which keeps us compliant with the audit finding.

Hunter education is required for all Kentucky hunters born after January 1, 1975. The KDFWR receives federal funds to administer the hunter education program. To ensure we can deliver the required number of hunter education classes, KDFWR uses volunteer instructors to deliver the majority of hunter education programs in Kentucky. Volunteer instructor hours are used as part of the required state match for federal aid. Volunteer hours are valued at \$20 per hour toward the state match of federal dollars. Volunteers accrue credit at the rate of \$1 in credit for every hour worked.

Like many other states, Kentucky provides incentives in the form of a gift card to these volunteers. Volunteer instructors receive a gift card between \$50 and \$450, annually, based on volunteer hours accrued. Our current policy does not allow volunteers to receive more than \$450 in a calendar year.

The hunter education program is reimbursed by federal grant money awarded by the United States Fish and Wildlife Service (USFWS). Our federal coordinator has stated that the outright cash payment to volunteers would jeopardize grant dollars for the program, but gift cards do not. Our current projection for gift cards this year is \$15,000. Issuing gift cards to volunteers, based on hours worked, is a very cost effective way to deliver hunter education training and certification to our constituents.

If this exception request is approved, the contract will be renewed on an annual basis.
Thank you for your consideration in this matter.

Ms. Joan Graham
Page 2

Finance and Administration
Office of Procurement Services
APPROVED
Joan Graham

Sincerely,

Billy M. Haslett

Billy M. Haslett, Director
Administrative Services Division



W. DAVID DENTON
CHAIR

COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
<http://ethics.ky.gov/>

JOHN R. STEFFEN
EXECUTIVE DIRECTOR

WILLIAM G. FRANCIS
VICE CHAIR

LEWIS G. PAISLEY
RICHARD L. MASTERS
MARTIN E. JOHNSTONE

KATHRYN H. GABHART
GENERAL COUNSEL

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

Executive Branch Ethics Commission
ADVISORY OPINION 15-01
May 4, 2015

RE: May the Kentucky Department of Fish and Wildlife Resources be granted an exemption from KRS 11A.040(5) in order to provide awards as part of an employee recognition program to employees who have “achieved excellence” or had accomplishments that have “helped to advance the Wildlife Division”?

DECISION: Yes, pursuant to the proposed criteria.

This opinion is issued in response to your request for an exemption to KRS 11A.040(5) from the Executive Branch Ethics Commission (the “Commission”). The matter was reviewed at the May 4, 2015, meeting of the Commission and the following opinion is issued.

On behalf of the Kentucky Department of Fish and Wildlife Resources (the “KDFWR”), you have requested that the Commission grant a request for exemption from KRS 11A.040(5). This statute prohibits a public servant from accepting any additional compensation for the performance of his or her official duties, without the prior approval of the Commission. The KDFWR is seeking an exemption to be allowed to present certain employees with an award for exceptional performance during the course of a given year.

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.

As stated in your letter, in 2012 the KDFWR requested an Advisory Opinion addressing several issues concerning whether an employee selected as a recipient of a KDFWR award may accept monetary or tangible items donated by an outside entity. In Advisory Opinion 12-07, the Commission stated that the proposed scenarios would violate the additional compensation provisions. The Commission did state, however, that “the Commission is willing to 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,” such as “employee of the month,” “Conservation Officer of the Year,” or “Biologist of the Year.”

ADVISORY OPINION 15-01

May 4, 2015

Page 2 of 5

The Advisory Opinion went on to state that the Commission would be willing to revisit this issue if KDFWR submitted more detailed information about the specific awards to be given.

KDFWR is now requesting that the Commission review the information you have provided and approve an exemption 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. Specifically, the Wildlife Division would like to present seven awards:

1. Biologist of the Year;
2. Game Management Foreman of the Year;
3. Wildlife Technician/ Administrative Support Employee of the Year;
4. Rookie of the Year (Less than 3 years' service);
5. Group Achievement Award;
6. Thinking Outside the Box Award;
7. Director's Leadership Award.

You indicate that the criteria for these awards is explained in the Nomination Form and Instructions that are distributed to the Division employees, attached as an enclosure hereto. The Division is seeking employees who have "achieved excellence" or had accomplishments that have "helped to advance the Wildlife Division." The KDFWR believes these criteria satisfy the criteria set forth in Advisory Opinion 12-07, but you state that if the Commission feels otherwise, the KDFWR would request that the Commission provide satisfactory wording for the criteria.

According to your letter, every employee selected for recognition (except for the Group award) would receive a framed wildlife print from the KDFWR's in-house art studio. The value of the print is \$20-\$25. The KDFWR would also pay to have the print framed, at an approximate cost of \$115. The KDFWR uses the Department of Parks frame shop, so no KDFWR funds will go to an outside vendor. All money spent for these awards will come from internal KDFWR funds and will not be provided by an outside entity.

Based on the foregoing, the KDFWR is requesting that the Commission grant an exception to KRS 11A.040(5) as recognition for select employees' exceptional performance above and beyond their official duties and approve an award of a framed print, as described above.

As previously discussed in Advisory Opinion 12-07, "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 awards proposed for the Wildlife Division's Employee Recognition Program do fall within the definition of "compensation" as used in the Executive Branch Code of Ethics.

Further, 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.

“Gift” is defined in KRS 11A.010(5):

"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, or door prizes available to the public[.]

Thus when considering awards programs, both KRS 11A.040(5) and KRS 11A.045(1) must be considered. The idea of incentives or awards for accomplishment has been previously addressed by the Commission in several advisory opinions. A very similar proposal was reviewed in Advisory Opinion 00-51. In that opinion, an inquiry was made regarding a committee within a different branch of state government that was working with an Executive Branch agency to initiate a program which would provide awards to employees of that Executive Branch agency who “excel in the services they provide....” The awards were expected to be donated by local businesses with each having a value of approximately \$50. An official within the agency would determine who would receive the awards, which would then be given by the Committee. In that opinion, the Commission, taking specific note of the provisions of KRS 11A.040(5), 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

ADVISORY OPINION 15-01

May 4, 2015

Page 4 of 5

for the employee The Commission sees the benefit of such awards in promoting improvement in the performance of Commonwealth employees.

In regard to the recognition 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 KDFWR resources and funds will be used. However, as the value of each award will exceed \$25, for the purposes of KRS 11A.040(5) additional review is required .

In Advisory Opinion 12-01, the Kentucky Housing Corporation (“KHC”) inquired about implementing an employee incentive program which would provide KHC employees with cash awards for offering suggestions which improve KHC productivity and services. In the Advisory Opinion, the Commission expressed concern that the proposed program could result in an employee receiving additional compensation for the performance of his official duties in violation of KRS 11A.040(5). The Commission opined that if 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, the proposed program would not pose any problem under the Code of Ethics.

The underlying concern is that executive branch employees are required to be independent and impartial. Acceptance of monetary or tangible rewards for the performance of one’s official duties, particularly those donated by outside entities, may create a perception that decisions made by your employees are not objective. Being given substantial awards for the performance of official duties creates concerns under KRS 11A.040(5) even in situations where KRS 11A.045(1) is not an issue.

However, 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 is willing to 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 Wildlife Division’s Employee Recognition Program as you describe in your request and as detailed in the enclosed Nomination Form and Instructions is such a program. The awards include criteria that indicate the potential recipients have exceeded or gone above and beyond their official duties. Therefore, the Commission hereby grants an exemption to the restrictions found in KRS 11A.040(5) to allow KDFWR employees to accept the awards proposed for the Wildlife Division’s Employee Recognition Program without violating KRS 11A.040(5).

In issuing this advisory opinion, the only determination being made by the Commission is whether the awards program is acceptable under the Executive Branch Code of Ethics. It is making no determination regarding its propriety otherwise.

Executive Branch Ethics Commission
ADVISORY OPINION 15-01
May 4, 2015
Page 5 of 5

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: W. David Denton

Enclosure:

Wildlife Division's Employee Recognition Program Nomination Form and Instructions