

ADVISORY OPINION 2006-002

Any advisory opinion rendered by the Registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121.135(4).

April 21, 2006

Reverend John Brewer
9903 Ponder Lane
Louisville, Kentucky 40272

Dear Rev. Brewer:

We received your written request for an advisory opinion on March 22, 2006, and your amended request with the revised contest rules on April 7, 2006. In your original request, you provided us the following facts: You are considering a contest in which prizes are awarded by means of a monthly random drawing to individuals displaying campaign window decals on their cars. You explained that the purpose of this contest is to create an incentive to display political advertising in support of your candidacy for State Representative.

Under KRS 121.175, allowable campaign expenditures are defined as “expenditures including reimbursement for actual expenses, made directly and primarily in support of or opposition to a candidate.” In general, the use of an incentive for advertising may be an allowable campaign expenditure so long as a candidate receives advertising valued at the cost of the items and prizes.

However, incentives to publicize a candidate’s name and qualifications must remain small enough that they do not qualify as an illegal consideration for a vote or moral or financial support. In prior correspondence with you, we expressed some

concern as to a few aspects of your proposed contest in terms of KRS 121.055, the so-called “vote buying” statute, and Section 150 of the Kentucky Constitution. KRS 121.055 provides, in relevant part, as follows:

No candidate for nomination or election to any state, county, city or district office shall expend, pay, promise, loan or become liable in any way for money or other thing of value, either directly or indirectly, to any person in consideration of the vote or financial or moral support of that person.

Further, Section 150 of the Kentucky Constitution provides for disqualification from office for a candidate who offers or promises any money or other thing of value to procure his or her election or to influence the vote of any voter. The Kentucky Supreme Court stated in Ellis v. Meeks, 957 S.W.2d 213 (Ky. 1997):

We assert, however, that KRS 121.055 does not require a ‘verbal’ communication. On the contrary, the statute contemplates that votes may be bought by gifts with no words spoken, and prohibits a candidate from even *indirectly* giving anything of value to a voter.

For this reason, the Court held that, by making free food available to precinct workers and voters at a polling place, the candidate had offered an item of value in exchange for their votes or moral support in violation of KRS 121.055.

Our concerns related to your contest, as originally proposed, included: (1) the monthly frequency of the drawings; (2) the award of cash prizes as opposed to non-monetary items such as gift certificates; and (3) the amount of the cash prizes, especially the \$1,000.00 grand prize just a few days from the general election date.

First, your original contest rules provided that the monthly drawings for the \$25.00, \$50.00 and \$100.00 cash prizes would be held on the last Friday of April, May, June, July, August, September, and October, with a \$1,000.00 grand prize drawing on November 3, 2006. You subsequently requested that we consider an amended version of the contest rules which postponed the monthly drawings until after the general election date. Although you attempted to address one of our concerns, the consideration is still problematic because it consists of a pre-election agreement or promise to make a campaign expenditure in the form of a cash prize. See 29 C.J.S. Elections § 554 (2005). Although your proposed contest does not provide direct compensation for a vote, the improper consideration is based on the potential eligibility for the monthly cash prizes and, more significantly, the grand prize cash award of \$1,000.00.

Second, your contest proposes the award of cash prizes as opposed to non-monetary items such as gift certificates. It is not clear within the text of the rules whether your intent is to award actual dollars to the winners. KRS 121.160(2)(c) expressly requires that any expenditures in excess of \$25.00 must be made by check.

Finally, a drawing for cash prizes as set forth in your contest rules strays far beyond the typical incentives or inducements utilized by candidates, such as buttons, pens, or nominal gift certificates. Once incentives become substantial and more expensive, the prize may go beyond the permissible limits of advertising expenditures and become improper inducements for a person's vote or moral or financial support. As acknowledged by the U.S. Supreme Court in Brown v. Hartlage, 456 U.S. 45, 52 (1982), "the States have a legitimate interest in preserving the integrity of their electoral processes." KRS 121.055 is designed to prevent both actual and perceived corruption in the political process. This advisory opinion does not attempt to restrict your ability to express ideas to voters; the use of window decals to advertise your candidacy is an acceptable campaign expenditure. However, despite the contest rules' express disclaimer of an attempt to influence the direction of a vote, the contest still falls under the scope of KRS 121.055 which includes any indirect influence on a person's moral support for a candidate.

As you have been made aware, pursuant to KRS 121.140(5), the Kentucky Attorney General's office, Commonwealth's attorneys, and county attorneys have concurrent jurisdiction with the Registry as to certain violations of KRS Chapter 121. Any knowing violation of KRS 121.055 would be referred to the Attorney General or appropriate local Commonwealth's or county attorney for possible prosecution of a Class D felony.

Further, the Registry's jurisdiction is limited to the application of the campaign finance laws under KRS Chapter 121. Therefore, we strongly recommend that you contact such other agencies which could possibly regulate your proposed course of action, such as the Department of Revenue or the Office of Charitable Gaming.

Please keep in mind that this advisory opinion is based on the specific facts set forth in your written request. If you have any questions concerning this advisory opinion, please do not hesitate to contact the Registry. Thank you.

Very truly yours,

Connie L. Verrill
General Counsel