

ADVISORY OPINION 00-43
September 22, 2000

RE: May chief information officer serve on the Mary Byron Foundation board of directors?

DECISION: Yes.

This opinion is in response to your July 12, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 18, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The chief information officer for the Justice Cabinet has been asked to sit on the board of directors of the Mary Byron Foundation, an organization established to award grants for education, training and support of victims' rights and issues. Initial donations to start up the Mary Byron Foundation came from the VINE Company, the company that now provides the Commonwealth's victim notification service through the Department of Corrections. Once the Foundation is incorporated and receives non-profit status, it expects to receive funds from other contributors. Although the chief information officer has no involvement in the awarding of contracts for victim notification services, he did participate in writing specifications for the contract. The Justice Cabinet asks if it would pose a conflict for the chief information officer to serve on the board of directors.

KRS 11A.020(1) and (3) provide:

- (1) No public servant, by himself or through others, shall knowingly:
 - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
 - (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.
- ...
- (3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

The Commission takes note that the chief information officer will receive no compensation for his service on the board of directors. Additionally, the VINE Company is only one of several businesses that will provide donations to the Foundation. Because it appears that there are currently no other vendors available to provide a victims notification service, and because the chief information officer does not make decisions in his official position regarding contracts for the Justice Cabinet, the Commission does not believe that the chief information officer's service on the board would be a substantial conflict with his duties in the public interest.

Therefore, the Commission believes that as long as the chief information officer has no involvement with the VINE Company as part of his official duty, he may serve on the board of directors of the Mary Byron Foundation. The chief information officer should disclose, in writing, his intention to abstain from matters

involving the VINE Company, and matters involving specifications for victim notification services, as directed by KRS 11A.020(3) above.

Additionally, as you have stated in your request, if any issues arise which might cause a conflict for the chief information officer, he should abstain from discussions or voting on such matters.