

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 02-21
March 22, 2002

RE: May a state agency have a partnership with private company for promotion or endorsement of program?

DECISION: No, unless such promotion will benefit the Commonwealth, and it will be open to any company wishing to partner with the state.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own initiative. This matter was reviewed at the March 22, 2002 meeting of the Commission and the following opinion is issued.

Recently a plethora of questions regarding public/private partnerships and the propriety of endorsements of products/companies by state agencies and state employees has come to the attention of the Commission. Questions such as:

- *May a state agency or state employees solicit corporate sponsors to assist in outreach of valuable state efforts in order to save marketing dollars?*
- *In return for such sponsorships, may a state agency recognize these corporate sponsors in some manner?*
- *May a state agency co-sponsor advertisements with corporations?*
- *May a state agency provide links to corporate web sites on state agency home pages?*
- *May a state program place its logo on materials distributed by private companies who agree to do so pro bono?*
- *May a state official appear in an advertisement for a state program that also promotes a private concern?*
- *May a state agency endorse a private company if there is a legitimate state purpose for doing so and if other companies have the same opportunities to enter into such agreements or partnerships with the state agency?*
- *May a state agency endorse or promote a company if the agency will receive a benefit from the company in exchange?*

In an attempt to answer these questions and other questions that might arise, the Commission issues the following opinion.

KRS 11A.005(1)(a) provides:

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

(a) A public servant be independent and impartial;

Additionally, KRS11A.020(1)(d) provides:

(1) No public servant, by himself or through others, shall knowingly:

...

(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.

In its review of these issues, the Commission has come to the conclusion that whether or not a state agency may enter into a partnership with a private company is a policy decision that is dependent on many factors. The ethics code requires that state officials be independent and impartial in carrying out duties for the Commonwealth. This factor is paramount in considering such partnering. State officials have an inherent duty to avoid any appearance of favoritism. Another factor to consider is the benefit the partnership will provide for the citizens of the Commonwealth and the benefit for the state's economic development.

The Commission believes that a state agency is not prohibited from soliciting corporate donations for state-sponsored programs, provided the entities solicited have no business or regulatory relationship with the agency and provided the entities are not lobbying or seeking to influence matters of the state agency. See Advisory Opinion 99-2 (a copy of which is enclosed). However, in several previously issued advisory opinions, the Commission recommended that state agencies and employees acting as representatives of their agencies take great care not to reflect that they are endorsing or promoting a specific product or company. Consequently, the Commission believes state agencies generally should not co-sponsor ads with corporations or provide links to private web sites on a state agency's homepage.

Although the Commission believes that a state agency may give a plaque to a corporation in recognition of its donation, the state agency should not publicly recognize the company in the newspaper or in television plugs. Such co-sponsorship or public recognition by a state agency may tend to reflect endorsement or promotion of a specific company. The Commission believes in order to uphold the public trust that state agencies should not actively endorse or promote such companies when no corresponding public benefit to the citizens of the Commonwealth or to the state's economic development will occur. Active endorsement or promotion of private companies by state officials would constitute an attempt to use one's position to give an advantage to a person or business in derogation of the state at large. KRS 11A.020(1)(d).

In Advisory Opinion 00-18 (a copy of which is enclosed), the Commission stated that the Kentucky State Police ("KSP") should take great care not to reflect that it is endorsing or

promoting a specific product or company; thus it should not allow its insignia to be used by a private auto maker for promotional purposes. Similarly, it appears that state agencies should not allow private companies to reference any state agency on material distributed for promotional purposes of the company or its products. Such action may appear to the public that the state agency is endorsing or promoting the company or its products. The Commission does believe, however, that if materials distributed by the private companies are merely brochures advertising the state program, and do not identify the private company, other than to state "printed by" and the company's name, then such use of the logo is acceptable.

Moreover, such public/private partnerships may not be prohibited when a state agency partners with a private company, or a public official appears in an advertisement for a program co-sponsored by a private company, to promote a state program that will benefit the entire Commonwealth or will promote economic development or tourism in the state. If the goal of such partnering is not to promote the private company, but to benefit the people of the Commonwealth, then any benefit to the private company is secondary. Thus, the Commission believes if a state agency wishes to partner with a private company to promote a state program that has overriding public benefit, it may do so, provided such partnering is open to any company interested in such partnering. Allowing all companies such an option will serve to avoid any appearance of favoritism by the Commonwealth. The Commission believes that the overriding public benefit from the partnership is sufficient to justify any benefit to the private company.

Enclosures: Advisory Opinion 99-2
 Advisory Opinion 00-18