

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

RE: May a state agency host, on state property, a fund-raising event in conjunction with a private company to generate funds for the agency's employee recognition program?

DECISION: No.

This opinion is in response to your March 18, 2002, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 22, 2002, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. Staff within the Cabinet for Families and Children (the "Cabinet") have asked if they may set up a "book seller" on state property in order to generate money for the agency's employee recognition initiative. This initiative receives no state funding except to allow employees state time to work on the program. Staff would contact a private company to operate the "book seller" on state property, with a percentage of the profits being turned over to the employee recognition program, the remainder to stay with the private company. Charitable organizations, similarly, have set up such "book sellers" on state property in the past to raise money. You have serious concerns about allowing such an activity but request advice from the Commission on the matter.

The Commission has held in previous advisory opinions that state agencies may not endorse or promote a specific company or product. See Advisory Opinions 01-21, 00-18. Although you state that charitable organizations have conducted such fundraisers on state property in the past, the issue in both of these situations is not the ultimate use to which funds would be put (to benefit the agency's employee recognition program or charitable endeavors), but rather the means by which such funds would be raised. The question posed here raises the bigger issue of when, or if, it is appropriate for state agencies to allow private companies onto state-owned or leased property for the purpose of making items available for sale to state employees. This includes not only for-profit operations but also those non-profit entities that seek to raise money for charitable purposes, for employee groups, or for state employees or agencies.

KRS 11A.005(1) provides, in part:

(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;
- ...
- (c) A public servant not use public office to obtain private benefits; and
- (d) The public has confidence in the integrity of its government and public servants.

Additionally, KRS 11A.020(1)(d) states in part:

- (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.

The Commission believes that private companies should not be allowed onto state-property for purposes of sales or fundraising unless they are authorized by statute or regulation, such as charitable organizations authorized in 101 KAR 2:095, or unless they have a contract with the state to provide such a service (i.e. insurance companies). The Executive Branch Code of Ethics requires public servants to be independent and impartial in carrying out their work for the Commonwealth. Therefore, by extension, we expect state agencies to be independent and impartial. Allowing a private company to set up a sales booth on state property may give the appearance that a state agency is favoring one company over another in that the state agency would be promoting the company. Thus, the Commission believes that agency staff should not seek a private book company to help with a fundraiser for employee recognition.

The Commission does not believe that an agency is totally prohibited from conducting fundraisers for initiatives or programs authorized by management, such as employee recognition or charitable campaigns; it just believes that such fundraising should not involve a private company outside of state government.

Enclosures: Advisory Opinion 01-21
Advisory Opinion 00-18