

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-33

June 28, 2002

RE: May a state agency partner with various private companies in the promotion of activities, events and programs beneficial to the agency and the Commonwealth and reflect such partnership through a plaque or marker?

DECISION: Yes, within limitations.

This opinion is in response to your April 12, 2002, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 28, 2002, meeting of the Commission and the following opinion is issued.

You state the following relevant facts. The Department of Fish and Wildlife Resources (the "Department") has, in the past, and anticipates that in the future it will enter into arrangements with various private companies for "sponsorship" opportunities, such as the "Buffalo Trace Buffalo Pen" and the "Toyota Living Stream" at the Salato Center. There would be no "endorsement" by the Department of such efforts save for a plaque or other marker at the site of the event or activity, and an announcement that the activity or event is "open." You pose the question, in light of the Commission's Advisory Opinion 02-21, may the Department continue with such beneficial arrangements that allow the Department to better fulfill its mission of public education?

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;

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Additionally, KRS 11A.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.

As the Commission stated in Advisory Opinion 02-21, the Ethics Code requirement expressed in KRS 11A.005(1)(a) above, that a public servant be independent and impartial in the performance of his duties is of paramount importance. So long as the entities solicited have no business relationship with the agency, are not regulated by the agency and are not lobbying the agency or seeking to influence decisions of the agency, then the agency may solicit such entities for such corporate donations. Active endorsement of a private company is impermissible, but placement of a plaque or marker to identify an entity's sponsorship of an agency event or program does not rise to the level of endorsement. That is because the thrust of the public/private partnership is to promote the agency's activity, not the private entity. The Department is only interested in furthering its mission of education on fish and wildlife resources and in promoting tourism, as the Department is an agency of the Kentucky Tourism Cabinet.

Thus, so long as the premises previously set forth by the Commission in AO 02-21 are followed by the Department in its program of partnering with private entities and companies to further the Department's mission of public education and tourism, the Department may allow placement of plaques and markers at the site of its events and activities that indicate the event or activity is a public/private venture. Although the private company may benefit from the plaque or marker, the overriding public benefit from the partnership is sufficient to justify any benefit to the private company.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.