

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 02-44**

September 11, 2002

RE: May a state regulator promote membership in a national industry trade association to those entities over whom the regulator has regulatory authority?

DECISION: No, but the Commissioner may allow the trade association to use the Commissioner's endorsement in its solicitation of such entities.

This opinion is in response to your August 1, 2002, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 11, 2002, meeting of the Commission and the following opinion is issued.

You state the following relevant facts. You are employed as Commissioner of the Department of Financial Institutions (the "Department"). As Commissioner, you charter, examine, supervise and regulate state-chartered banks in Kentucky. You are an active member of the state banking agencies' national trade association, the Conference of State Bank Supervisors (CSBS), a non-profit, incorporated association, with principal offices in Washington, D.C. There are two types of membership: 1) Regular Membership, which is limited to the supervisor of state-chartered banking institutions in each state, and 2) Member Banking Institutions, which is affiliate membership for state-chartered banks. The affiliate members may not vote or hold office in the CSBS, though they may serve on committees. State agencies pay dues to the CSBS for their regular memberships, but the bank affiliate members' annual dues make up a large portion of the CSBS income. You state that state regulators such as yourself are expected by CSBS to contact banks regulated by state regulators and submit promotional membership material to those banks which explains the benefits of membership, and invite the banks to join CSBS.

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You ask:

- 1) *May a state regulator promote membership in a national industry trade association to institutions regulated by his/her agency? It should be noted that the regulator does not benefit monetarily in any way. All associational sponsored meetings, conferences, training seminars, etc. are paid by agency funds.*
  
- 2) *May the Commissioner of DFI allow the Director of CSBS to use the Commissioner's name as an endorsement in solicitation letters sent directly from the director to prospective affiliate members even though the prospective members may do business with the state or are regulated by the Department, or may be affected by regulation of he Department?*

The Commission held in Advisory Opinion 94-70 (a copy of which is enclosed) that an agency head who wanted to solicit items from a business over which the agency had some regulatory authority could not do so because the business would be less likely to refuse the regulator's request based on the business's regulatory relationship with the agency.

In this situation your agency has far-reaching regulatory authority over banking institutions in Kentucky. Though the mission and purpose of the CSBS likely makes affiliate membership for banks beneficial, the CSBS is, by name and membership differentiation, first and foremost, an organization that serves the needs of its Regular Membership. Thus, if you, as state regulator of banks, send promotional materials to those banks your agency regulates in an effort to boost affiliate membership in CSBS, those banks may feel pressure to join CSBS because of who is asking, especially since as a regular member you are tasked by CSBS to recruit affiliate members to boost CSBS' income. Because of this conflict, the Commission believes that neither you, nor anyone in the Department, should be involved with recruitment efforts for CSBS with banks in Kentucky.

Your second question poses an alternative scenario in which the Commissioner would have no involvement with any recruiting of banks to be affiliate members of CSBS. Instead, the director of CSBS would use the Commissioner's name as an endorsement in solicitation letters sent directly from the director to prospective affiliate members. Previously, the Commission held, in Advisory Opinion 02-28 (copy of which is attached) that a state official could allow this arrangement because the organization in question promoted the interests of the state agency.

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Here, CSBS clearly promotes the interests of the Department. Thus, the CSBS director may use the Commissioner's name as an endorsement in solicitation letters sent directly from the CSBS office to prospective affiliate members. The Commissioner, however, should not directly solicit banks in Kentucky for membership.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 94-70  
Advisory Opinion 02-28