

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 02-47**

September 11, 2002

RE: May a state agency allow a private dermatology practice to have a booth at the agency's Human Resources Fair to perform skin screenings for cancerous or pre-cancerous conditions?

DECISION: No, unless booth space is available for any practice that wishes to provide such a service.

This opinion is in response to your August 16, 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. The Kentucky Transportation Cabinet (the "Cabinet") is sponsoring a Human Resources Fair (the "Fair") for its employees. The Fair will be held on the first floor of the State Office Building in Frankfort. A number of booths will set up there, and a request has been made for a private dermatology practice to perform simple skin screenings for melanoma or other cancerous or pre-cancerous conditions. You ask whether the Commission foresees any ethical problems related to the Cabinet's invitation to the private practice to appear at the Fair.

KRS 11A.005(1)(a)-(d) provide:

(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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- (b) Government policy and decisions be made through the established processes of government;
- (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)(a) and (d) state:

(a) 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 addressed a similar issue in Advisory Opinion 02-22. In that scenario, a state agency was seeking to hold a fundraiser on state property to benefit an employee recognition program, proposing that a private company help in fundraising. The Commission held that “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.”

In this instance, the Cabinet is holding an informational Fair solely for the benefit of its own employees. Clearly the private dermatology practice would be performing a valuable public service for Cabinet employees in providing free health screenings and would benefit the Commonwealth. The Commission’s concern is that the health screenings would naturally lead to office visits with the private practice, and that the benefits Fair thus would directly lead to increased business and profits for the private practice, by providing the private practice with sole access to these state employees. The Commission is also concerned that providing only this one private practice with booth space gives the appearance that the Cabinet is endorsing the services provided by this private practice over other similar providers.

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Thus, the Commission believes the Cabinet should not allow a private dermatology practice to provide such health screenings on state property, unless booth space is offered fairly and properly to all dermatology practices in the local area (See AO 02-21). Furthermore, the Cabinet should not allow any private dermatology practice which participates in the benefits Fair to solicit (i. e., hand out business cards; display signs, promotional materials or name tags; recommend individuals or the practice for its private business) while in the conduct of the Fair.

As an alternative, the Cabinet could investigate the possibility of a state agency or the county health department providing such services.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY VICE CHAIR:      Joseph B. Helm, Jr.

Enclosures:    Advisory Opinion 02-22  
                  Advisory Opinion 02-21