

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-7

March 25, 2003

RE: May state officials attempt to influence employment decisions in return for favors?

DECISION: No.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own initiative. This matter was reviewed at the March 25, 2003 meeting of the Commission and the following opinion is issued.

In 1992, the General Assembly passed a code of ethics to help guide the behavior of elected and appointed officials, as well as employees, within the executive branch of state government. This law, found in KRS Chapter 11A, states the following in KRS 11A.005(1):

(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;
- (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) provides:

- (1) No public servant, by himself or through others, shall knowingly:
 - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
 - (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.

It has been reported in official findings by the Transportation Cabinet that the Governor, at the request of a political contact and woman with whom he has publicly admitted an affair, contacted the Director of the Division of Kentucky Vehicle Enforcement, within the Transportation Cabinet, and asked him to consider a particular officer for a promotion to a sergeant's position that was being considered.

The Commission believes that neither the Governor, nor any other high ranking official within the executive branch, should attempt to influence decisions of employment within state government based on favors received from, or requests by, political contacts when, in fact, the official has no personal knowledge of the capabilities or qualifications of the individual for whom he is trying to influence a decision.

The Governor and other high ranking state officials should not use their offices or positions in any way to obtain private benefits or an advantage for themselves or any other person in disregard of the public interest. Use of one's official position to circumvent the independent, established processes of government policy and decision making, even by the Governor, should not be allowed. When a state official has a private, intimate relationship with

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an individual and makes recommendations to state officials based solely on requests of that individual, the Commission believes that the independent processes of state government are hindered. The granting of favors by a state official based on favors in return, even if not explicitly promised, interferes with the impartiality of government. The Commission believes such acts of favoritism are precisely the type of activity that the Executive Branch Code of Ethics was enacted to prohibit.

The Governor, as well as other state officials, should take great care not to give any appearance that they are using their positions in the hiring of employees to give someone an advantage in disregard of the public interest. Any recommendations made by an official to someone under his authority should be based on factual evidence of the individual's qualifications. Additionally, state officials should abstain from making recommendations regarding family members or any individuals with whom the official has a close, intimate relationship. The Commission believes that a suggestion by the Governor, to a state official under his authority, to consider someone for a position is, in fact, an attempt to influence a decision, whether meant to be or not.

The Commission has considered the argument that the Governor (and other politicians) frequently make recommendations to officials within state government concerning the employment of individuals in state government. It has also considered the fact that part of the Governor's responsibilities include appointment of non-merit employees to positions within state government. The Commission does not dispute these arguments but believes that the overriding need for public confidence in the integrity of the executive branch of state government, which begins with the Office of the Governor, also requires compliance with the Executive Branch Code of Ethics.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.