

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-15

March 25, 2003

RE: Kentucky Racing Commission Pins

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

The Commission has recently become aware of a long-standing practice by the Kentucky Racing Commission ("Racing Commission") of handing out several hundred "racing commission" pins to individuals which allow them free admission to state tracks, and access to privileged areas at the Derby, such as millionaire's row. Information available to the Commission asserts that the individual tracks decide what privileges those awarded the pins will receive. In the past, the pins have been provided to former governors, former Racing Commission members, Racing Commission office staff, cabinet secretaries, employees of the governor's office, and other politically connected individuals.

The pins are paid for out of a pool of stipend monies that is composed of stipends donated by the Racing Commission members.

The Commission views this practice by the Racing Commission in light of KRS 11A.005(1)(c) and KRS 11A.020(1)(d), which 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:

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ADVISORY OPINION 03-15

March 25, 2003

Page Two

(c) A public servant not use public office to obtain private benefits; and

(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 practice of the Racing Commission providing these pins to individuals to allow the individuals free admission and access to privileged areas of tracks obviously puts pressure on tracks to allow such gratuities. It is a clear conflict of interest for the Racing Commission to solicit free admission for pin owners from the tracks, as the Racing Commission closely regulates the tracks, and the tracks would undoubtedly feel pressure to comply with the "request." Even if the Racing Commission members or staff do not directly solicit the tracks for such gratuities, the awarding of the pins to individuals certainly suggests, based on past practice, that the Racing Commission requests such. If a track decided not to allow free admission based on pin ownership, clearly the Racing Commission members and staff involved in regulating the track would be aware of such a decision.

While the Racing Commission members themselves are not subject to the Executive Branch Code of Ethics (the "Code"), the Racing Commission staff is, and the members of the Racing Commission should consider the negative impact such a practice has on public confidence in the integrity of state government. The Commission previously has issued advisory opinions that address the propriety of solicitation of vendors or regulated entities by state agencies, and the obligation an entity may feel because of the source of the solicitation. See Advisory Opinions 98-13 and 94-70.

Furthermore, any perceived public benefit of the distribution of pins is outweighed by the need to uphold the public trust in the independence of government.

ADVISORY OPINION 03-15

March 25, 2003

Page Three

The Commission is concerned, also, about the propriety of distributing many of the pins to Racing Commission office staff and other previously noted state government officials. These state employees are subject to the Code, and specifically the gifts prohibition at KRS 11A.045(1) which states:

(1) No public servant, his spouse, or dependent child knowingly shall accept any gifts or gratuities, including travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five dollars (\$25) in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

Though the pins are paid for by Racing Commission members, the true benefit of the pins isn't the pins themselves, but the free admission to tracks that the pins provide (and apparently access to all areas of the tracks), and these benefits are paid for by the tracks. As Racing Commission staff and certain other state officials who work for agencies that regulate the tracks, they should not accept gratuities provided by the pins that exceed the allowable amount set forth above in KRS 11A.045(1). If an employee has an official purpose to be at the track, then obviously the track may allow the employee access to the track areas needed to fulfill official duties, without the need of a pin. However, as "perks" of the job, the gratuities provided by the pins in excess of the amount stated above are prohibited by the Code.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinions 98-13 and 94-70