

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 03-42**

December 18, 2003

RE: May a state agency allow its name to be used in advertisements for a benefit concert, the proceeds of which will benefit youthful offenders housed by the state agency?

DECISION: Yes.

This opinion is issued in response to your October 14, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 18, 2003 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. A facility operated by the Department of Juvenile Justice (the "Department") has advised the Department's central office that a regionally known singer plans to hold a benefit concert with proceeds to go to the residents' recreational account. The event will not be held on state property. The singer will not receive any financial benefit from the concert and no state resources will be expended on the event.

The Department asks whether the facility and/or the Department may allow its name to be included in the advertisement of the event, specifically to state that the proceeds of the concert will benefit of the residents of the Department's facility.

In Advisory Opinion 00-18, the Commission stated "... they [state agencies] should take great care not to endorse or promote a specific company or product."

In Advisory Opinion 02-21, the Commission stated that:

"Active endorsement or promotion of private companies by state officials would constitute an attempt to use one's position to give an advantage to a person or business in derogation of the state at large. KRS 11A.020(1)(d)."

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Though the question presented does not involve a private company or a “product,” it does involve a private individual (the singer) who proposes to hold a fundraiser for the benefit of persons in the care and custody of the Department. The Commission has been very reluctant, for the reasons highlighted above, to allow state agencies to actively endorse private companies or products.

However, in this case, the Commission believes that the Department may allow the advertisement of this event to include language that the event will benefit the residents of the Department’s facility. The Commission does not view the use of the Department’s name in this case as an endorsement of the singer that will benefit or give an advantage to the performer.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.