

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 04-15**

May 27, 2004

RE:            May former executive director of the Kentucky Horse Racing Authority pursue employment options in the horse racing industry?

DECISION:    Yes, within limitations.

This opinion is issued in response to your April 23, 2004 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 27, 2004 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. In February 2004 you retired from your position in state government employment as the Executive Director for the Kentucky Horse Racing Authority. You began employment with the Kentucky Racing Commission (now "Kentucky Horse Racing Authority") in March 1984. Prior to that date, you were employed by various racing associations as a racing official in part-time positions that would last the duration of an assigned race meeting. From 1974, when you began your career as a racing official, until you left your position as Executive Director and Chief State Steward for the Kentucky Horse Racing Authority on January 14, 2004, officiating for thoroughbred horse racing has been your only occupation.

In your desire to continue employment in the only occupation and profession in which you have been involved, you sought employment in the horse racing industry. Prior to your seeking such employment, you sought guidance from the 1998 edition of "Employee Handbook" published by the Personnel Cabinet, which includes a summary of KRS Chapter 11A. You specifically relied on the language that states, "You are allowed to return to the same business or profession in which you were involved prior to state employment. However, for six months, you must not work on any matter in which you were directly involved during the last thirty six months of your state employment." You also reviewed KRS 11A.040(7), which provided you with further guidance concerning returning to your former profession or occupation.

On April 9, 2004 you entered into an agreement with Churchill Downs, Incorporated to consult on an array of subjects dealing with horse racing and their operations in Kentucky and in other states where they operate. Both Churchill Downs and you were “acutely” aware of the limitations imposed by the provisions in the Employee Handbook as well as KRS Chapter 11A.

You believe that you are in total compliance with the statute and will continue to be with any future employment. On April 21, 2004, the president of Churchill Downs cancelled the agreement with you for consulting services. You have not received any compensation or fees for consulting services from the president of Churchill Downs, and by mutual agreement with the president of Churchill Downs, you will not accept any compensation.

You ask for a request for an advisory opinion regarding employment that you may pursue in the horse industry.

The post-employment provisions in KRS 11A.040 (7), (8), and (9) provide:

(7) A present or former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with, or is regulated by, the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, or for which he received, prior to his state employment, a professional degree or license, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.

(8) A former public servant shall not act as a lobbyist or lobbyist's principal in matters in which he was directly involved during the last thirty-six (36) months of his tenure for a period of one (1) year after the latter of:

(a) The date of leaving office or termination of employment; or

(b) The date the term of office expires to which the public servant was elected.

(9) A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, for a period of one (1) year after the latter of:

Please find a copy of *Leaving State Government?* that will provide you with guidance concerning your future employment in the horse industry. Because you state that you would be returning to your former occupation and profession in which you were involved prior to your state employment, you are not prohibited from accepting compensation from any person or business that does business with the state, or is regulated by the state, even if you had direct involvement in such matters during the last three years of your state employment.

However, if you accept employment with, or compensation from, such a person or business (i.e. Churchill Downs), for six months following your retirement you may not work on any matters in which you were directly involved the last three years of your state tenure.

“Directly involved” is defined in KRS 11A.010(18), provided below:

(18) "Directly involved" means to work on personally or to supervise someone who works on personally; and....

Based on previous advisory opinions, you are considered to have been directly involved in any matters in which employees under your supervision have had direct involvement also, or in other words, any matters that have been before the Kentucky Racing Commission.

Therefore, although you are not prohibited from immediately having a contract or an agreement with Churchill Downs, Incorporated to provide consulting services, for six months following your retirement, any consulting services that you provide to Churchill, or any horse racing track in Kentucky, should be limited to matters that were not before the Kentucky Racing Commission during the last three years of your state employment. As the Executive Director and Chief Steward for the Kentucky Racing Commission, you were charged with enforcing the rules of horse racing in Kentucky. It is difficult for the Commission to envision circumstances relating to horse racing in Kentucky that would not relate to matters in which you had direct involvement. However, any work regarding operations of horse racing in other states would not appear to relate to matters in which you would have had direct involvement.

Additionally, for one year following your retirement, you may not serve as a lobbyist or employ a lobbyist in matters in which you had direct involvement the last three years of your employment. You also may not, for one year, represent a person or business before the state in matters in which you had direct involvement the last three years of your employment.

“Represent” is defined in KRS 11A.010(17) below:

(17) "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.

Enclosure: *Leaving State Government?*