

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 04-26
August 5, 2004

AUTHORIZATION FOR EXCEPTION TO KRS 11A.045(1)

EXCEPTION NO. 2004-1
August 5, 2004

RE May Governor and Lieutenant Governor accept from Churchill Downs tickets for the Kentucky Oaks and the Kentucky Derby?

DECISION: Yes, within limitations.

This authorization opinion for an exception to KRS 11A.045(1) is issued by the Executive Branch Ethics Commission (the "Commission") upon its own motion. This matter was reviewed at the May 27 and August 5, 2004 meetings of the Commission and the following authorization is issued.

According to recent news articles, Churchill Downs Racetrack ("Churchill Downs") provided to the Governor and the Lieutenant Governor two sections of box seating for both the Kentucky Oaks and the Kentucky Derby.

KRS 11A.045(1) relating to the acceptance of gifts by public servants provides:

- (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

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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.

The Kentucky Horse Racing Authority, a state agency with which the Governor has had direct involvement, has regulatory authority over Churchill Downs. Additionally, Churchill Downs is an employer of executive agency lobbyists who are registered to lobby the Governor, as well as the Lieutenant Governor. Thus, the Governor is prohibited by KRS 11A.045(1) from accepting a gift with a value of greater than \$25 from Churchill Downs, unless the Commission grants an exception as authorized above.

The Commission believes that if it is necessary for an elected official to attend an event as part of his official duty for the Commonwealth, the elected official should be allowed to accept the cost of admittance to the event. Because the Governor and Lieutenant Governor represent the Commonwealth at these events, the Commission believes that they may accept free admittance to both the Kentucky Oaks and the Kentucky Derby.

Thus, the Commission grants an exception for the Governor to accept twelve box seats and 12 walk-around passes for both the Kentucky Oaks and the Kentucky Derby. Although it does not appear that the Lieutenant Governor has had any direct involvement in matters relating to the Kentucky Horse Racing Authority, and thus would not require an exception to accept gifts from Churchill Downs, the Commission also grants a similar exception for the Lieutenant Governor due to the fact that Churchill Downs may be lobbying the Lieutenant Governor. The Commission believes that the acceptance of such tickets by the Governor and the Lieutenant Governor will not create an appearance of impropriety, but will allow them to represent the Commonwealth nationally.

Any additional tickets that are offered to the Governor by Churchill Downs should not be accepted unless an additional exception is obtained from the Commission.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.