

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 04-29**

September 30, 2004

**RE:** May employees accept boat ride during Derby festivities from insurance company if employees will be discussing insurance issues with attendees and distributing informational packets?

**DECISION:** No, if the value of the boat ride exceeds \$25.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own motion. This matter was reviewed at the September 30, 2004 meeting of the Commission and the following opinion is issued.

The Commission recently reviewed a matter where questions were raised regarding whether employees of the Office of Insurance ("Insurance") could accept a boat ride on the Spirit of Jefferson, as part of the Derby festivities, when asked by an insurance company to attend and speak to licensees relative to licensing processes and issues during the ride.

According to the insurance company that invited the employees to attend the Great Steamboat Chase, the price of the event was \$0.00, and the face value on the ticket to attend was \$0.00. Introductions, a speaker, and an awards ceremony at a hotel preceded the boat race. During the boat race, a food buffet and a cash bar were available.

Also during the race, the employees did discuss specific insurance issues with numerous licensees. At the end of the race, the employees distributed an informational packet on new procedures and licensing requirements. Employees frequently provide one on one and group training for insurance professionals. However, such sessions are generally not held during a boat race in conjunction with Derby festivities.

Consequently, a question arose as to whether, in fact, employees of Insurance could accept the value of the boat ride from an insurance company. The Commission will attempt to provide guidance to the employees of Insurance in order to ensure future compliance with the Executive Branch Code of Ethics.

KRS 11A.045(1) and (2) provide:

(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.

(2) Nothing in KRS Chapter 11A shall prohibit or restrict the allocation of or acceptance by a public servant of a ticket for admission to a sporting event if the ticket or admission is paid for by the public servant at face value or is paid for at face value by the individual to whom the ticket is allocated.

The Commission reviewed website pages for the Spirit of Jefferson and noted that the value of lunch and dinner cruises on the Spirit of Jefferson range from \$20 to \$30 per person. The fee to charter the Spirit of Jefferson begins at \$1850 for a two-hour cruise. The Commission also reviewed website pages for the Kentucky Derby festivities and noted that the cost of the Great Steamboat Chase, in which the Spirit of Jefferson competed against the River Queen, was \$30 per person. Thus, although the face value of the ticket provided by the insurance company for the boat ride was zero, there was a published cost for tickets of \$30 each, which was presumably paid by the insurance company. The Commission believes the employees have a due diligence obligation to determine the actual value of the ticket.

While it appears that the value of the boat ride only slightly exceeded the amount that an employee may individually accept from an entity regulated by an employee's state agency, the Commission also believes that because the insurance company invited the employees to attend the function as a part of their official duties, that the gift could actually be viewed as given to the agency and then would indeed total more than \$25, and would be prohibited.

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The Commission believes that employee interaction with licensees in order to train and provide information is appropriate and that employees/agencies generally should not have to pay a fee to attend a function to present such information. However, the Commission further believes that when such function includes gratuities, such as meals and entertainment, the agency should pay for the value of the meal and entertainment if the agency believes it is worthwhile for its employees to attend such a function. If the agency does not believe that it is worthwhile for an employee to attend such an event as part of the employees' official duty, and the employees wish to take leave time and attend the function, the employee should pay for the value of the meal and entertainment.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: James S. Willhite