

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 05-30

May 27, 2005

**AUTHORIZATION FOR EXCEPTION TO KRS 11A.045(1)
EXCEPTION NO. 2005-3**

RE: May Kentucky Horse Racing Authority accept fingerprinting machines from professional organizations?

DECISION: Yes.

This opinion is in response to your May 25, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 27, 2005 meeting of the Commission and the following opinion is issued.

The National Racing Compact ("NRC") and Racing Commissioners International ("RCI") have offered to donate to Kentucky Horse Racing Authority (the "Authority") three electronic fingerprinting machines with a value of \$40,000 each. The Authority is a member of both organizations and pays dues of \$17,000 per year to RCI.

It is the Commission's understanding that the Authority does not regulate either organization, but rather that the organizations are information sharing groups that provide assistance to members and strive for uniformity in the enforcement of regulations relating to the racing industry, which would include the licensing of participants in pari-mutuel racing. The organizations' memberships are comprised of agencies that regulate pari-mutuel wagering, with the RCI having non-voting associate members as well, consisting of industry-related entities that are regulated by the Authority. You indicate that NRC and RCI are unique in their services and to your knowledge there are no other organizations of a similar kind that would seek your membership.

NRC and RCI are willing to donate the fingerprinting machines because Kentucky is a major state for the horse industry and those organizations want the Authority to share information with them about problem licensees. Kentucky is not sharing such information at this time, but would do so if this equipment is received. Licensees who are to be fingerprinted using these machines will pay the \$34 charge for fingerprint processing.

You ask for an advisory opinion from the Commission as to whether the Authority may accept as a donation the three electronic fingerprinting machines, valued at \$40,000 each, from the NRC and RCI.

KRS 11A.045(1), relating to the acceptance of gifts, provides the following:

(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. (Emphasis added.)

In previously issued advisory opinions, the Commission concluded, based on the provisions above, that state agencies are prohibited from accepting gifts from persons or businesses doing business with, regulated by, or seeking to influence the actions of the state agency. Thus, the Authority would be prohibited from accepting gifts from entities that do business with, are regulated by, or seek to influence the actions of the Authority.

In reviewing your request, it does not appear that either the NRC or the RCI is regulated by the Authority. However, the question remains as to whether the NRC or the RCI "does business with" the Authority, by virtue of the Authority's memberships in those organizations.

According to KRS 11A.010(14):

(14) "Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;

Because the Authority pays a membership fee to RCI in return for receiving the services of membership, it would appear that the Authority does have a business relationship with at least RCI. Since the fingerprinting machines each have a value far in excess of \$25, and they are being given by at least one organization with which the Authority has a business relationship, an exception from the Commission, pursuant to KRS 11A.045(1), is needed in order for the Authority to accept the donation.

The Commission considered other relevant issues to determine whether an exception to the gift restriction would be appropriate in this instance. First, it determined whether either the NRC or the RCI has as its primary purpose the representation of entities regulated by the Authority. Although the RCI is funded in part by the dues of such entities, both organizations appear to have as their primary purpose the representation of the interests of regulators of the industry rather than of those that are regulated. This is supported by the fact that the NRC is comprised solely of agencies that regulate pari-mutuel wagering, and that the only members of the RCI with voting rights are those same types of agencies.

Second, the Commission determined whether other similar organizations were competing with the NRC or the RCI for the Authority's membership. Since you have indicated that the services provided by these two organizations are unique and to your knowledge no other organizations provide similar services or compete for the Authority's membership, no actual conflict would appear to exist if the Authority were to accept the donation from the NRC and the RCI.

The reason behind the offer to donate the equipment appears to be a worthy one, and the Commission is of the opinion that no actual conflict or appearance of impropriety would be created by a state agency's acceptance of a donation from a professional organization when the only relationship between the agency and the organization or its members is created by payment of membership fees to a professional organization that is unique to the agency and serves the mission of the agency. Thus, the Commission hereby grants an exception for the Authority to accept the three fingerprinting machines from the NRC and the RCI. This exception is based on the information provided to the Commission.

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The Commission further grants an exception for any agency to accept a gift from a professional organization when the only relationship between the agency and the organization or its members is created by payment of membership fees to a professional organization that is unique to the agency and serves the mission of the agency.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: James S. Willhite

Enclosure: Advisory Opinion 03-11