

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 94 – 35

June 16, 1994

RE: Is the Governor's acceptance of moneys from the Breeders' Award Fund a violation of the Executive Branch Code of Ethics?

DECISION: No

This opinion is issued by the Executive Branch Ethics Commission on its own initiative.

In the 1992 General Assembly, Governor Brereton Jones and his administration actively promoted a bill to create the Breeders' Award Fund, as a means of helping Kentucky's horse industry which includes the Governor, a thoroughbred owner and breeder. The legislature passed the bill and Governor Jones signed it. The Governor applied for moneys due him when the state Racing Commission released the first list of those who have qualified to receive money from the Breeders' Award Fund. The list shows that Governor Jones is eligible to receive at least \$16,325. The Governor's General Counsel has advised the Commission the Governor intends to accept the awards due him. The question arises as to whether the Governor's acceptance of moneys from the Breeders' Award Fund is in violation of the Executive Branch Code of Ethics (KRS 11A), which also was passed by the 1992 legislature at the Governor's urging.

A review of the Code by the Commission reveals no specific provision of the Code which can be cited as being violated by the Governor's acceptance of moneys from the Breeders' Award Fund. While statements of public policy contained in KRS 11A.005 recognize the public trust imposed upon the Governor, who is working for the benefit of the people of the Commonwealth, with the inherent duty of avoiding potential conflicts with personal financial interests, there is no specific statutory provision prohibiting acting with the appearance of impropriety.

The Commission states, however, its disappointment with the Governor's apparent decision to proceed to accept the moneys from the Breeders' Award Fund without regard to the effect this will have upon public confidence, and the example that it sets for state employees. Governor Jones has held himself out to the public as the "ethics Governor," and made passage of the Ethics Code a priority in his administration. However, actions speak louder than words, and while state employees are asked not to accept more than a "cup of coffee" to avoid any appearance of impropriety, the Governor is enriching himself with \$16,325 from a state program. His acceptance of these awards does not comport with the ideals embodied by the Code.

The Commission has considered the argument that the Governor, by participating fully in the awards program, would benefit to no greater extent generally than other members of the thoroughbred breeding business. It has also considered the fact that the Governor or any other state employee can be a beneficiary of a state law. The Commission does not dispute these arguments, but believes they are outweighed by the overriding need for public confidence in the integrity of the executive branch of state government which begins with the Governor's office.

We would further note that the Ethics Code now addresses the issue of a member of the Executive Branch lobbying before the General Assembly where he "uses or attempts to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest. . . ." by prohibiting same pursuant to KRS 11A.020(1)(a).