COMMONWEALTH OF KENTUCKY

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JEANIE OWEN MILLER

JOHN R. STEFFEN
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#3 FOUNTAIN PLACE
FRANKFORT, KY 40601
(502) 564-7954
FAX: (502) 564-2686

DANA COX NICKLES
GENERAL COUNSEL

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 09-5
January 23, 2009

RE: May the Deputy Secretary of the Tourism, Arts, and Heritage Cabinet accept employment with the World Games 2010 Foundation, Inc.?

DECISION: Yes.

This opinion is issued in response to your January 9, 2009 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the January 23, 2009 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed as the Deputy Secretary of the Tourism, Arts, and Heritage Cabinet and have recently accepted a position as the Chief Executive Officer for the World Games 2010 Foundation, Inc. ("Foundation"). The Foundation is a non-profit Kentucky 501(c)(3) corporation created to enter into a contract with the Federation Equestre Internationale ("FEI"), and the United States Equestrian Federation, to host, promote and organize the World Equestrian Games 2010 ("2010 Games"). The Kentucky Horse Park (the "Horse Park") will be the main venue for the 2010 Games.

The Horse Park is attached for administrative purposes to the Tourism, Arts, and Heritage Cabinet. It is run by the Kentucky Horse Park Commission ("KHP Commission") which is established under KRS 148.260 and whose mission it is to provide management expertise and direction in the operation of the Horse Park. Although the Horse Park is attached to the Tourism, Arts, and Heritage Cabinet, you have limited involvement with the Horse Park due to the fact that it is operated by an independent, statutorily-created commission. You have never been a member of the KHP Commission; however, the Secretary of the Tourism, Arts and Heritage Cabinet is an ex officio member of the KHP Commission, and you have occasionally represented the Secretary in her absence. Since the Horse Park is administratively attached to the Cabinet, you have had limited involvement in budgetary or other administrative matters, although, due to the 2010 Games, you are aware that the Cabinet has expedited certain capital projects for the Horse Park that were already budgeted.

There is presently no business relationship between the Tourism, Arts, and Heritage Cabinet and the Foundation; however, the Horse Park and the Foundation have been negotiating a use agreement to allow the Foundation to use the Horse Park facilities as the primary venue for the 2010 Games. Under the agreement, the Foundation is expected to pay the Horse Park a sum of money set aside for that purpose. You informed the Commission's staff that you have had no involvement in the ongoing contractual negotiations between the Horse Park and the Foundation.

You ask whether any post-employment restrictions in KRS Chapter 11A apply to your situation. KRS 11A.040 (7) provides:

> (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.

KRS 11A.010 defines "person" as an individual, proprietorship, firm, partnership, limited liability partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, limited liability corporation, association, club, committee, organization, or group of persons acting in concert. "Does business with" or "doing business with" is defined as 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. "Agency" is defined as every state office, cabinet, department, board or commission, public corporation, or authority in state government. KRS 11A.010(10) further provides that a public servant is deemed employed by the agency by which his appointing authority is employed unless the agency is attached to the appointing authority for administrative purposes only.

The Commission has previously considered the question of whether the Deputy Director of the Horse Park could immediately be employed by the Foundation. In Advisory Opinion 06-2, we held he could be employed if he was returning to his former business or profession and abstained from matters in which he had direct involvement during his employment with the Horse Park. Because he was returning to his prior profession, KRS 11A.040(7) permitted him to begin his employment immediately, even though there appeared to be a business relationship between the Horse Park and the Foundation.

Your situation is distinguishable in several respects. It appears from your representations that the Tourism, Arts, and Heritage Cabinet is not doing business with the Foundation, nor is the Foundation being regulated by the Commonwealth. Pursuant to KRS 11A.010(10) and KRS 148.260 et seq., the Horse Park is deemed to be a separate agency and any relationship that exists between the Cabinet and the Foundation, exists solely because the Horse Park is attached to the Cabinet for administrative purposes. Since the Horse Park is deemed a separate agency and you have had no involvement in any matters related to the 2010 Games on behalf of the Cabinet or the Horse Park, you are not prohibited under KRS Chapter 11A.040(7) from immediately accepting employment with the Foundation.

KRS 11A.040(8) contains a one year restriction applicable to former public servants with respect to lobbying activities, and KRS 11A.040(9) will prevent you from representing the Foundation before your former agency for a period of one year. You should familiarize yourself with those restrictions especially as they may pertain to your new employment situation.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

Gwen R. Pinson

By Chair: Gwen R. Pinson

Advisory Opinion 06-2