

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 00-17**  
February 25, 2000

Re: May Kentucky State Police employees accept outside employment to handle facility security and traffic control problems for Kentucky Speedway?

Decision: Yes.

This opinion is in response to your February 11, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 25, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Kentucky Speedway, a privately owned auto racing facility scheduled to open in June of 2000, has proposed to employ and pay a number of Kentucky State Police (KSP) officers, solely in their off-duty hours, to handle facility security and traffic control problems. KSP has statewide jurisdiction to detect and prevent crime, apprehend criminals, maintain law and order throughout the Commonwealth of Kentucky, and enforce Kentucky's criminal, motor vehicle, and traffic laws. KSP is amenable to the proposal, but requests guidance from the Commission as to whether, and under what circumstances, this outside employment would present any conflicts of interest for the officers. You ask also whether the officers could wear KSP uniforms and/or drive KSP vehicles while working for the Kentucky Speedway.

KRS 11A.040 (10) provides:

(10) Without the approval of his appointing authority, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.

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(a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant

(b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.

The Commission believes employees of KSP may accept outside employment with Kentucky Speedway as long as there currently is not a business relationship or active regulatory relationship between the KSP and the Kentucky Speedway. If a business or regulatory relationship should develop between KSP and Kentucky Speedway, then KSP employees would need to terminate their employment with Kentucky Speedway.

Also, the Commission believes that whether KSP employees may wear KSP uniforms and/or drive KSP vehicles while working for Kentucky Speedway is primarily a management decision. However, the Commission has advised employees in previous advisory opinions not to use state equipment and supplies in their private business. The Commission believes that management should consider KRS 11A.005 when making this decision. KRS 11A.005 (1) provides:

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

(a) A public servant be independent and impartial;

(b) Government policy and decisions be made through the established processes of government;

(c) A public servant not use public office to obtain private benefits; and

(d) The public has confidence in the integrity of its government and public servants.

A clear distinction should be made between the employee's official duty and his private employment.

KRS 11A.040 (5) provides:

(5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

Furthermore, if the officer is called into duty while employed by the Kentucky Speedway, the officer should not receive compensation from Kentucky Speedway for performance of his official duty for the state.