

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-28

May 8, 2002

RE: May the Commissioner of Agriculture solicit funds on behalf of NASDA from entities the Department may regulate directly or indirectly or with which it does business?

DECISION: No.

This opinion is in response to your April 30, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 8, 2002 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The National Association of Departments of Agriculture ("NASDA") will conduct their annual meeting October 4 through 9, 2002, in Lexington, Kentucky. The membership of NASDA consists of agriculture commissioners and secretaries of the various 50 states, Puerto Rico, Virgin Islands, and Guam. The purpose of the annual meeting is to discuss agricultural issues and concerns on both the state and federal levels and to conduct business of the organization.

Commissioner Billy Ray Smith of the Kentucky Department of Agriculture (the "Department") is serving as the current President of NASDA until the end of the annual meeting. In his capacity as President, and if approved by the Commission, Commissioner Smith would like to solicit corporate sponsors, both national and state, to help defray the costs of the meeting, including rental of facilities, receptions, and other associated costs. You anticipate that the corporate sponsors for the annual meeting will be a diverse group including some in agriculture-related industries. Neither Commissioner Smith, nor the Department, will receive any personal benefits from these solicitations. All contributions will be made payable to NASDA and will be sent to NASDA's Washington, D.C. office for deposit and disbursement of funds. Solicitation letters will be printed on NASDA stationery and signed by the Commissioner as President of the organization. Any expense associated with the solicitations will be paid by NASDA.

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You state that Commissioner Smith is well aware of KRS Chapter 11A and the many ethics opinions dealing with conflicts of interest and appearances of conflicts. He is also aware of House Bill 503 passed recently by the General Assembly that relates to solicitation of funds for charitable organizations. NASDA is a 501(c)(6) organization and is chartered in the District of Columbia. In light of the passage of HB 503, you request an opinion on the following:

May the Commissioner of the Kentucky Department of Agriculture, in his capacity as President of NASDA, solicit funds, on behalf of NASDA to defray costs of the NASDA annual meeting, from sponsors which the Department may regulate directly or indirectly or with which it does business?

KRS 11A.020(1)(d) provides:

(1) No public servant, by himself or through others, shall knowingly:

...

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

In Advisory Opinion 99-10 (a copy of which is enclosed), the Commission advised that the Lieutenant Governor not be prohibited from allowing an organization that was promoting the interests of the Office of the Lieutenant Governor to use his name as an endorsement in solicitation letters to prospective contributors. The Commission also advised that the Lieutenant Governor should not directly solicit entities that do business with or are regulated by any state agency under his ultimate jurisdiction, nor should he draft a letter of endorsement to be sent with a solicitation letter from the director of an organization.

Similarly, the Commission believes that, because NASDA promotes the interests of the Department, the Commissioner may allow the director of NASDA to use his name as an endorsement in solicitation letters sent directly from the director to prospective donors even if those donors do business with or are regulated by the Department. However, the Commissioner should not directly solicit corporate sponsors that do business with or are regulated by the Department, or that may be affected by regulation of the Department.

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Although House Bill 503 allows for public servants and state agencies to raise funds for charitable nonprofit organizations under Section 501(c) of the Internal Revenue Code, the Commission does not believe that NASDA, which is organized as a 501(c)(6), business league organization, is a “charitable” organization. Charitable organizations as defined under the Internal Revenue Code 501(c) are those organizations granted an exemption under 501(c)(3).

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.

Enclosure: Advisory Opinion 99-10