

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-8

May 29, 2003

RE: Guidance on Role of the Office of the Governor in Personnel Recommendations

This opinion is issued by the Executive Branch Ethics Commission (the “Commission”) upon its own motion. This matter was reviewed at the May 29, 2003, meeting of the Commission and the following opinion is issued.

During its conduct of a recent investigation, the Commission had occasion to review the purpose and responsibilities of the Office of Constituent Services (“Constituent Services”) within the Office of the Governor. The Commission understands that the purpose of Constituent Services is to serve as a liaison between the people of the Commonwealth and the Governor.

The Constituent Services website states that the liaisons employed by Constituent Services are Governor Patton’s representatives to each of Kentucky’s counties. If a citizen has a question, concern, or issue regarding his county, he may contact a Constituent Services representative. Six (6) representatives and a director serve as liaisons for various counties and also are assigned as representatives to certain cabinets. Constituent Services liaisons are responsible for visiting the counties for which they serve as liaisons and for becoming knowledgeable of the needs of those counties.

The Commission believes that the role of Constituent Services, or any such function within the Office of the Governor, must be clarified so that the employees within the Office of the Governor do not go beyond the boundaries of service and provide favoritism to certain individuals. This opinion is an attempt by the Commission to address such concerns.

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

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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.

Additionally, KRS 11A.020(1) provides:

- (1) No public servant, by himself or through others, shall knowingly:
 - (a) Use or attempt 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;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
 - (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.

The statutes above were written to ensure that decisions made and processes conducted within state government are done so independently and without favoritism.

The function of Constituent Services provides a necessary service for the citizens of the Commonwealth. It is a source that citizens may contact when they are not sure where to turn to address their concerns within state government. Constituent Services provides citizens with guidance on which agency or individual to contact regarding concerns they may have.

However, neither Constituent Services, nor any other function of the Office of the Governor, should be used to influence other state agencies in derogation of the public

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interest at large. Liaisons employed by Constituent Services, and other employees of the Office of the Governor, should not be in the business of sending employment recommendations and/or applications to other state agencies based solely on callers' requests. Such suggestions from the Office of the Governor, because of the source, are an attempt to influence the receiving agency in employment situations and often will, in fact, affect decisions by the receiving agency. When information is provided to an employee of the Office of the Governor from a constituent or political contact about someone seeking a position and the employee of the Office of the Governor has no direct knowledge as to the qualifications or capabilities of the individual, a recommendation for such an individual by an employee of the Office of the Governor is a clear misuse of power. The independent, established processes of government should be followed in the employment of individuals within state government.

The Commission believes that employees within the Office of the Governor are not prohibited from providing information to individuals regarding how to apply for positions in state government and what agencies to contact, but employees should not be sending letters of recommendation to agencies, especially when an employee has no personal knowledge of the qualifications of the individual applying for the position.

Additionally, the Commission wishes to emphasize that the role of the Office of the Governor should be fair and impartial to all individuals seeking services. The requests of "political contacts" should be handled no differently from any other person who calls for service, regardless of political persuasion. The Office of the Governor should not be used as a political contact office serving only the needs of those individuals who have been designated as "political patronage" individuals, or giving such individuals an advantage over others. The Executive Branch Code of Ethics was enacted to prohibit such activity within state government and put an end to the "good ole boy" network of favoritism. The practice of political contacts having an inside track to obtain favoritism within the Office of the Governor goes against the ideals of the Executive Branch Code of Ethics.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.