

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 04-1**

February 20, 2004

RE:            May an agency accept free amusement ride passes, to distribute to the agency employees, from amusement companies the agency regulates?

DECISION:    No.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own motion. This matter was reviewed at the February 20, 2004 meeting of the Commission and the following opinion is issued.

The relevant facts are as follows. The Department of Agriculture ("Agriculture") is responsible for inspections of amusement rides that operate within the Commonwealth, and has been since 1986. The Commission recently became aware that Agriculture, annually since 1986, has been receiving free ride passes during the State Fair for its employees' use from a company that provides midway amusement rides at the Fair, and more recently that Agriculture solicited and received well over 50 ride passes during the Fair for employees' use from another company that provides amusement rides at the fairgrounds.

The Executive Branch Code of Ethics prescribes acceptable behavior for state employees and state agencies. Acceptance of gifts by employees is addressed in KRS 11A.045 as provided below:

(1) No public servant, his spouse, or dependent child knowingly shall accept any gifts or gratuities, including travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five dollars (\$25) in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

The Commission's long-standing belief that the provisions above also apply to the solicitation and acceptance of gratuities by "agencies," in addition to agency employees, is addressed in several advisory opinions. See Advisory Opinions 02-48, 97-28, and 96-42. If an

agency seeks or accepts such gratuities from companies it inspects, the independence of the inspections conducted may be questioned.

Thus, the Commission advises Agriculture to immediately cease the apparent long-standing practice of soliciting and/or accepting free ride passes from amusement ride operators and owners. This prohibition also applies to any employees accepting such ride passes individually, if the value of the pass exceeds \$25. Merely because the practice was long-standing and appears to have pre-dated the Executive Branch Code of Ethics, does not make acceptance of such gratuities acceptable or lawful practice by Agriculture, or by any state agency that regulates or does business with the amusement companies, unless the agency holds a contract with the company and the contract includes the supplying of such passes.

If employees of Agriculture need ride passes to conduct the inspections of the rides as part of their official duties, Agriculture should purchase ride passes for the employees.

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BY CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 02-48  
Advisory Opinion 97-28  
Advisory Opinion 96-42