

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 04-25

August 5, 2004

RE: May the Department of Tourism contract with the Kentucky Tourism Council for the sale of advertisements in the Great Getaway Guide?

DECISION: Yes.

This opinion is issued in response to your June 30, 2004 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 5, 2004 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Department of Tourism ("Tourism"), within the Commerce Cabinet, has issued a Request for Proposals (RFP), through the Finance and Administration Cabinet procurement process, for any non-profit travel-related organizations that wish to partner with Tourism to sell advertisements that will be included in Tourism's 2005 Great Getaway Guide. Any non-profit organization that wishes to participate will receive a commission (10%) based on its sales.

The Kentucky Tourism Council ("KTC") is the only organization that responded to the RFP by the deadline of June 1, 2004. The Commissioner of Tourism, as well as the Commissioner of the Department of Parks ("Parks") (also within the Commerce Cabinet), each serves as current board members of the KTC. The Commissioner of Tourism is an ex-officio non-voting board member by virtue of his state position. The Commissioner of Parks is a voting member as the state parks representative. Because of their state employee positions, the KTC does not allow them to be officers in the organization. Furthermore, the KTC board of directors has never been asked to vote on this potential partnership.

The Finance and Administration Cabinet is concerned that a potential conflict of interest exists due to the Commissioners' service on the KTC, and thus, you request an advisory opinion on this matter.

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Page Two

KRS 11A.020(1)(a), (d), and (3) provide:

(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;

...

(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.

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

It appears that both Commissioners serve on the KTC by virtue of their positions and not due to personal interest. The interest that the Commissioners have on the KTC is presumably of benefit to Tourism and Parks. The Commission assumes that the Commissioners do not receive any compensation for their service on the KTC, but serve as part of their official duties for the Commonwealth.

Thus, the Commission sees no conflict in Tourism contracting with the KTC.

If the Commissioners were to serve on the KTC on a personal basis, rather than by virtue of their positions, a potential for conflict would then exist if either of the Commissioners had involvement in their official positions with matters regarding the KTC.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.