

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 05-19**

March 30, 2005

RE                    May Kentucky Horse Park Commission members who are also state employees accept subscription for Three-Day Event from nonprofit organization hosting the event?

DECISION:        No, if a business relationship exists between the organization and the Horse Park.

This opinion is issued in response to your March 22, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 30, 2005 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You work for a nonprofit organization that conducts the Rolex Three-Day Event at the Kentucky Horse Park, scheduled for April 28-May 1. Historically, your organization has offered one Patrons' Club Subscription (the "subscription"), which has a value of \$425, to each member of the Horse Park Commission ("Horse Park"), some members whom are state employees. The subscription entitles the member to the following:

- Admission with preferred parking
- Admittance to the Patron's Club tent
- Closed-circuit television in the Tent
- Complimentary beverages in the Tent and on the Cross-Country Course
- Luncheon Buffet Thursday, Friday and Saturday
- Brunch Sunday morning
- Reserved grandstand seating area (uncovered) for Dressage and Stadium Jumping
- Official Event Program
- Admission to the Trade Fair
- General Admission to the Kentucky Horse Park
- 2005 Rolex Kentucky Three-Day Event Patron Pin

You ask if it is appropriate for your organization to offer such a gift to Horse Park Commission members. If the Executive Branch Ethics Commission determines it is appropriate, you also ask if a Horse Park Commission member may request and accept another subscription, at no cost, for his/her spouse. If not, you ask whether your organization may offer the member a subscription for his/her spouse at a reduced rate, or whether it is appropriate to offer a complimentary subscription to the spouse.

KRS 11A.045(1) provides:

(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.

From the information that you have provided it is uncertain whether a business relationship exists between the Horse Park and the nonprofit organization, or whether the nonprofit is attempting to influence the actions of Horse Park. A nonprofit organization, although not a “business “ operated for profit, does fall within the definition of “person.”

If a business relationship exists or if the nonprofit organization is seeking or attempting to influence the actions of the Horse Park, the following advice is given. As provided above employees of the Commonwealth who serve as members of the Horse Park Commission by virtue of their state positions, and therefore have supervisory authority over the Horse Park, are prohibited from accepting gifts or gratuities from nonprofit organizations or that do business with or are attempting to influence the Horse Park. Accordingly, although the nonprofit organization is not prohibited from offering the subscription to the Horse Park Commission members and their spouses, those members who also are

employees may not accept a subscription, either at full value or a reduced rate, for either themselves or their spouses, if such a relationship exists with the nonprofit organization. Their spouses also would be prohibited from accepting such a gift from the nonprofit organization.

Regarding Horse Park Commission members who are not employees, the Executive Branch Ethics Commission, in previously issued advisory opinions, concluded that members of state boards and commissions are not considered public servants subject to the Executive Branch Code of Ethics, unless the board or commission is specifically listed in the "officer" definition in KRS 11A.010(7). Because the Horse Park Commission is not a board or commission specifically listed, the members would not be subject to the Executive Branch Code of Ethics in KRS Chapter 11A.

However, the Executive Branch Ethics Commission also believes the actions of boards members of an executive branch agency should reflect high standards and be such that the public confidence is upheld in the integrity of the agency. In order not to damage such public confidence, board and commission members should also be independent and impartial in their decision-making capacities for their respective agencies.

Because the Commission feels strongly about this matter, in June of 2004 it proposed an initiative to board and commission members encouraging them to adopt a "model code of ethics" for the members of their respective boards and commissions. The model code encompasses three areas where potential conflicts could arise for board and commission members: 1) Acceptance of Gifts, 2) Disclosure of Conflicts of Interest, and 3) Contracts/ Agreements, the first of which would apply to your question.

The model code provides that members of a board or commission should be subject to the same provisions to which employees are subject regarding the acceptance of gifts. Thus, if an entity is doing business with an agency over which the state board or commission supervises, the members of the state board or commission should not accept gifts with a value of over \$25 per year from that entity. The Executive Branch Ethics Commission is not sure whether the Horse Park Commission has adopted such a model code to guide the behavior of its member, but encourages it to do so if it has not.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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**BY CHAIR:** James S. Willhite