

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 06-7

April 10, 2006

RE: May the Department of Public Advocacy solicit other state agencies and the public to play in golf tournament to benefit the Kentucky Innocence Project?

DECISION: Yes, provided the persons and businesses solicited are not doing business with, involved in litigation against, or seeking to influence the DPA.

This opinion is issued in response to your March 16, 2006 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 10, 2006 meeting of the Commission and the following opinion is issued.

The Department of Public Advocacy (the "DPA"), an agency within the Justice and Public Safety Cabinet (the "Cabinet"), coordinates Kentucky's statewide public defender system pursuant to KRS Chapter 31. The attorneys employed by the DPA represent indigent people accused of, convicted of, and incarcerated for criminal offenses. The vast majority of cases represented are by court order.

The Kentucky Innocence Project ("KIP"), a joint effort between the DPA and Kentucky's law schools, seeks to exonerate wrongly convicted individuals through the use of DNA evidence. Public defenders teach KIP classes, help KIP students investigate selected cases of inmates who claim wrongful conviction, and serve as counsel of record in court cases that have been investigated and worked up with the help of KIP students. KIP cases are rarely the result of court order. Rather, inmates submit their cases to KIP, which screens them and selects the ones that seem to merit investigation. KIP is located in the central DPA offices in Frankfort. It is not a charitable organization, but rather part of the DPA.

KIP is planning a series of regional golf tournament fund-raisers to be held in April. The Commissioner has suggested that the DPA invite staff from other agencies within the Cabinet to participate in the fund-raisers. Those agencies include Kentucky State Police, the Department of

Corrections and the Department of Juvenile Justice, agencies which the DPA litigates against on a regular basis. The golf tournament entry fee solicited covers green fees, lunch, awards, and a donation to KIP.

You ask the following questions:

1. *Is there any prohibition against KIP inviting the rest of our Cabinet to participate in this fundraiser? (Remember that our Cabinet includes people against whom we litigate.)*
2. *Is there any prohibition against KIP inviting members of the public to participate? I do not know how KIP is thinking about disseminating invitations to anyone outside the Cabinet. But, I do know that the people in the general public, with whom our staff deal in their work include:*
 - a. *private lawyers who handle conflict-of-interest cases for our agency on a contract basis,*
 - b. *commonwealth's attorneys and county attorneys*
 - c. *judges*
 - d. *local law enforcement officers, such as sheriffs and jailers*
 - e. *experts in the forensic and mental health sciences, who we retain for professional services in our cases*
 - f. *the usual vendors to state government agencies*
 - g. *staff at the schools where KIP has students*

KRS 11A.005(1)(a) and (d) provide:

- (1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the 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;
 - ...
 - (d) The public has confidence in the integrity of its government and public servants.

KRS 11.045(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.

The Commission has issued several advisory opinions regarding solicitation which may provide you with guidance in this matter. In Advisory Opinion 02-14 (a copy of which is enclosed), the Commission concluded that an agency's solicitation of cities regulated by, doing business with or seeking to influence the agency could constitute an appearance of a conflict of interest, if not an actual conflict, even if the division soliciting the funds is not the division that regulates the cities. The opinion further stated that it would not appear to be a conflict of interest for the agency to solicit funds from a federal program that was not doing business with, regulated by, or seeking to influence the agency.

Although, in your situation, you do not plan to ask for donations, but rather wish to ask individuals to participate in a golf tournament that will benefit an agency program, the Commission believes, similarly, that employees of the DPA should not solicit persons or businesses to play in the golf tournament, and thus provide a donation to the agency, if the persons or businesses are regulated by, doing business with, involved in litigation against, or in some way are seeking to influence the DPA.

Other persons or businesses with which your agency works that are not doing business with, are not in an adversarial role against, and are not seeking to influence the DPA, may be solicited by employees of the DPA. Such action will not cause any potential conflicts of interest.

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The DPA would not be prohibited under Chapter 11A from soliciting employees of other state agencies within your Cabinet. However, because the DPA litigates against these agencies on a regular basis, the Commission envisions circumstances that may cause actual conflicts if employees of the DPA were to solicit certain employees of such agencies. Thus, the Commission recommends that the DPA develop in-house polices to address such potential conflicts of solicitation of other agency personnel.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb

Enclosure: Advisory Opinion 02-14
Advisory Opinion 98-38
Advisory Opinion 97-9