

Executive Branch Ethics Commission
ADVISORY OPINION 07-17
May 10, 2007

RE: May branch manager of state records branch provide consulting services for World Games 2010 Foundation?

DECISION: Yes, provided the agreement is in compliance with KRS 45A.340.

This opinion is issued in response to your April 18, 2007 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 10, 2007 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. You currently serve as the president of the Frankfort-Bluegrass chapter of a professional organization for individuals in the records management field. Through that connection, you have been asked to provide records management consulting services for the World Games 2010 Foundation (the "Foundation"), an organization that has been established to oversee the day-to-day administration of the Alltech World Equestrian Games 2010. You will be compensated by the Foundation, but will not be using your official position to obtain the compensation since you plan to utilize your leave time to provide the service.

In your position as the manager of the State Records Branch, Public Records Division, Department for Libraries and Archives ("Libraries and Archives"), you exercise general supervisory and advisory responsibility over records management programs created and maintained by state agencies. In your consulting services for the Foundation you will be conducting inventories, establishing file structures, and recommending retention and disposition instructions for the records created, used and maintained.

You believe that the Foundation is a private entity, rather than a state agency, and thus not an entity over which Libraries and Archives has any regulatory control. You request advice as to whether your serving as a records management consultant for the Foundation will present a conflict of interest for you.

The Commission points out that it recently discovered that even though the Foundation is a 501(c)(3) non-profit corporation, it also is a component unit within the financial reporting entity of the Commonwealth as determined by the Finance and Administration Cabinet, and thus

pursuant to Advisory Opinion 07-14 is considered an executive branch agency. It does not appear, however, that the Foundation is regulated by Libraries and Archives.

KRS 11A.040(4), provided below, states that a public servant may not have an agreement with the state agency by which he is employed, and also must comply with KRS 45A.340, the Model Procurement Code, which states that an employee may not have an agreement with any state agency unless it is less than \$25 or it is competitively bid.

- (4) A public servant shall not knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340...

Thus, the Commission believes that you are not prohibited from having an agreement with the Foundation to provide records management consulting services provided the agreement is made through competitive bid, and provided such service does not pose a conflict with your official position for Libraries and Archives pursuant to KRS 11A.020(1)(a), provided below. For example, you should not be involved in matters regarding the Foundation as a part of your official duty and also have an agreement with the Foundation privately. The Commission advises you also to consult with the Finance and Administration Cabinet legal staff regarding this matter.

- (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;

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Vice Chair: Cynthia C. Stone