

Executive Branch Ethics Commission  
**ADVISORY OPINION 07-7**  
May 10, 2007

**RE:** May 2008 Matches Inc. accept donations from private companies for staging of the 2008 Ryder Cup golf tournament?

**DECISION:** Yes, within limitations.

This opinion is issued in response to your February 7, 2007, request for an Advisory Opinion from the Executive Branch Ethics Commission (“Commission”). This matter was reviewed at the May 10, 2007, meeting of the Commission and the following opinion is issued.

According to your letter, a Kentucky not-for-profit corporation, 2008 Matches, Inc., recently was formed for the sole purpose of assisting with the staging of the 2008 Ryder Cup Golf Tournament to be held at Valhalla Golf Club. Currently, 2008 Matches, Inc.’s Board of Directors consists of the Secretary of Commerce and the Secretary of Economic Development serving ex officio, the Executive Director for the Office of the Kentucky Sports Authority (“Sports Authority”) within the Commerce Cabinet, and two other directors (soon to be appointed) who are not state officials. More directors may be added in the future up to a maximum of sixteen. Matches 2008, Inc. is staffed by employees of the Sports Authority.

Many businesses have expressed interest in donating money to assist with the staging of the event. Some of these businesses may have contracts with the Commerce Cabinet or with the Cabinet for Economic Development. You ask whether 2008 Matches Inc. may accept such monetary donations from private companies for the staging of this event.

Additionally, the Department of Tourism (“Tourism”), within the Commerce Cabinet, would like to enter into a contract with the Professional Golfer’s Association (“PGA”) of America and 2008 Matches, Inc., to assist in the staging of the event. Tourism’s efforts may involve payment for certain items such as hot air balloons. You ask whether Tourism may enter into such an agreement.

KRS 11A.020(1)(d) provides:

- (1) No public servant, by himself or through others, shall knowingly:
  - ...
- (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.

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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.

The Finance and Administration Cabinet, Office of Statewide Accounting, reviewed the not-for-profit corporation, 2008 Matches, Inc. and has determined that it is not a component unit or within the primary government of the Commonwealth of Kentucky for financial reporting purposes. Thus, based on that analysis, the Commission believes that 2008 Matches, Inc. is not a part of an executive branch "agency" of state government, as defined in KRS 11A.010(10) below;

(10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his appointing authority is employed, unless his agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department; (emphasis added).

Whereas 2008 Matches, Inc., is not a part of an executive branch agency and thus may accept monetary donations from private companies, employees of the Sports Authority who provide staff for 2008 Matches, Inc., may not solicit donations for the not-for-profit from private companies that have a business or regulatory relationship with, or are trying to influence the actions of the Sports Authority. Further, KRS 11A.020(1)(d) would prevent any executive branch employee that is serving on the Board of Directors of 2008 Matches, Inc., from directly soliciting donations, or taking any part in the solicitation of donations, from persons or businesses that are regulated by or doing business with those employees' respective agencies. See also Advisory Opinion 04-31, enclosed, for additional guidance.

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The Commission understands that 2008 Matches, Inc., a nonprofit corporation organized for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, is presently seeking to obtain recognition of its charitable status from the Internal Revenue Service. Should 2008 Matches, Inc., be recognized as such by the IRS and granted a tax exemption accordingly, then members of its Board of Directors who also are employees of the executive branch, as well as any other employees or agencies of the executive branch, may raise funds on its behalf pursuant to KRS 11A.055(1), which states:

- (1) Any provision of KRS Chapter 11A to the contrary notwithstanding, a state agency or a public servant may raise funds, either individually or as a department or agency, for a charitable nonprofit organization granted a tax exemption by the Internal Revenue Service under Section 501c of the Internal Revenue Code without violating the provisions of this chapter. Raising of funds shall include but not be limited to holding events for the benefit of the charitable organization, contacting potential donors, providing prizes, and engaging in other forms of fundraising and providing the funds thus raised to the charitable organization.

Regarding your second question, whether Tourism may enter into a contract with the PGA of America and 2008 Matches, Inc., to assist in the staging of the 2008 Ryder Cup, the Commission previously opined in Advisory Opinion 02-21 (enclosed) that whether or not a state agency may enter into a partnership with a private company, such as the PGA, is a policy decision that is dependent on many factors. The Executive Branch Code of Ethics requires that state officials be independent and impartial in carrying out duties for the Commonwealth. This factor is paramount in considering such partnering. State officials have an inherent duty to avoid any appearance of favoritism. Another factor to consider is the benefit the partnership will provide for the citizens of the Commonwealth and the benefit for the state's economic development. Partnerships with private companies which benefit the entire Commonwealth or promote economic development or tourism are in general acceptable, assuming all other legal requirements are met. See Advisory Opinion 05-43 enclosed.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Vice Chair: Cynthia C. Stone

Enclosures: Advisory Opinion 05-43  
Advisory Opinion 04-31  
Advisory Opinion 02-21