

Executive Branch Ethics Commission  
**ADVISORY OPINION 10-05**  
September 27, 2010

**RE:** May a state regulator use state time and resources to promote membership and participation by comparable regulators from other jurisdictions in an international professional association comprised of such regulators?

**DECISION:** Yes, with some limitations, if such use of state time and resources is approved by agency management.

This advisory opinion is issued in response to your August 23, 2010 request for an advisory opinion from the Executive Branch Ethics Commission (the “Commission”). This matter was reviewed at the September 27, 2010 meeting of the Commission and the following opinion is issued.

You are employed by the Department of Charitable Gaming (the “Department”), which provides regulation, oversight, and education to the charitable gaming industry in Kentucky. You have been elected president of the North American Gaming Regulators Association (“NAGRA”), which is a nonprofit professional association of gaming regulators. This organization brings together agencies that regulate gaming activities and provides them a forum for the mutual exchange of regulatory information and techniques. NAGRA collects and disseminates regulatory and enforcement information, procedures, and experiences from all jurisdictions, and provides on-going gaming education and training for all members. In addition to gaming regulators, the organization also has trade affiliate members who are not authorized to vote or attend closed meetings of the corporation. Generally the “trade affiliate” members are for-profit entities that provide supplies or services to the gaming industry (vendors).

Your letter states that while none of the gaming regulators from the other jurisdictions could ever be licensed by Kentucky to participate in gaming, some of the trade affiliates are currently licensed and all of them could potentially be licensed.

Your responsibilities as president of NAGRA include conducting board meetings, coordinating with the executive director and other board members, reviewing standards updates, soliciting memberships, coordinating with other organizations that have an interest in the regulation of gambling, and encouraging conference attendance, sponsorship, and exhibitors.

You accurately state that you believe it is clear that you cannot solicit membership, conference attendance, sponsorship or exhibitors from anyone that is a potential licensee in the state of Kentucky (trade affiliates or vendors). You reference Advisory Opinion 02-44 in this regard. However, you ask whether you may use state time, stationary, postage, e-mail, telephone, and your official title to perform all the other duties of president, including soliciting memberships and conference attendance from other regulatory members.

KRS 11A.005 states:

- (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;
  - (b) Government policy and decisions be made through the established processes of government;
  - (c) A public servant not use public office to obtain private benefits; and
  - (d) The public has confidence in the integrity of its government and public servants.

KRS 11A.020(1) provides:

- (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;
  - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
  - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
  - (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.

As indicated in your letter, you should not solicit membership, conference attendance, sponsorship or exhibitors from anyone that is a potential licensee of your Department. The situation you describe is very similar to the one previously addressed by the Commission in Advisory Opinions 02-28 and 02-44, and you may continue to rely on these opinions for guidance when dealing with these type of entities on behalf of NAGRA.

Regarding whether you may use state time, stationary, postage, e-mail, telephone, and your official title to perform all the other duties of president, including soliciting memberships and conference attendance from other regulatory members, the Commission has historically opined, for the most part, that decisions regarding proper use of state time and resources should be left to management's discretion provided state time and equipment are not misused. This was recently discussed in detail in Advisory Opinion 08-24, attached, relating to a situation where time and resources proposed to be used by state employees were to benefit a non-profit entity whose mission ultimately benefited the agency involved. The facts involved were thus very similar to the situation being addressed herein, in that NAGRA is a nonprofit professional association that exists primarily for the purpose of assisting agencies such as yours in the performance of their missions. In Advisory Opinion 08-24, the Commission concluded that agency management should decide the proper use of state time by an employee and the limit to which state resources may be committed to that non-profit entity. Conversely, however, the Commission added that should the requirements of the non-profit entity be such that an employee hired to perform tasks for the agency be unable to complete his regular job duties, or should the use of state employees and state resources become continuous and ongoing, it was management's responsibility to insure that limits are observed and abuses do not occur.

One could distinguish the situation discussed in Advisory Opinion 08-24, where state employees were to be used as needed to assist the non-profit entity on something of a continuous basis, from the situation addressed by the Commission in Advisory Opinion 05-4, also attached, wherein the question was whether the official duties of state employees could include performing duties for an annual conference of an association that, while in a different field, is similar in function and purpose to NAGRA. In that opinion, the Commission concluded that if the management of the agency involved believed it to be in the best interest of the agency to allow its employees to perform such duties, the Executive Branch Code of Ethics would not prohibit it. Since it was a single event, the Commission did not include cautionary language as it did in Advisory Opinion 08-24 regarding the outside work detracting from the state employee's performance of his regular job duties or if the use of the time or resources became onerous.

Consistent with these previous opinions, the Commission believes it would be appropriate in your situation for Department management to decide whether and to what degree you may use state time, stationary, postage, e-mail, and telephone to perform your duties as NAGRA president, including soliciting memberships and conference attendance from other regulatory members. Since this work for NAGRA will be performed on an ongoing basis, at

Executive Branch Ethics Commission  
**ADVISORY OPINION 10-05**  
September 27, 2010  
Page Four

least during your tenure as president, the Commission does caution that the work you perform for NAGRA, if approved by your agency's management, should not prevent you from completing your regular job duties, nor should the use of your time and state resources on behalf of NAGRA become onerous. It is management's responsibility in this regard to insure that limits are observed and abuses do not occur.

Regarding the use of your official title for such purposes, while you may use it in a factual manner, you may not use it in order to secure or create privileges, exemptions, advantages, or treatment for yourself or NAGRA.

The Commission's decision herein is limited to the facts presented and premised upon the fact that this case involves a non-profit entity, the mission of which has a benefit to your agency. The Commission's jurisdiction extends only to the implications of the conduct presented under KRS Chapter 11A. This decision should not be interpreted as addressing any implications of the conduct presented under KRS Chapter 18A.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Acting Chair: Ron Green

Attachments: Advisory Opinion 08-24  
Advisory Opinion 05-4

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