

ADVISORY OPINION 94 - 8

February 3, 1994

- RE: 1) May Executive Director review regulations for fee?
 2) May state veterinarians serve as consultants to feed company or accept private employment at racetrack?

- DECISIONS: 1) No
 2) No

This opinion is in response to your December 16, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 3, 1994, meeting of the Commission, and the following opinion is issued.

You have questions concerning three situations. You state the relevant facts of the first situation as follows. You are the Executive Director of the Kentucky Racing Commission. The Association of Racing Commissioners International, an organization to which the Racing Commission belongs, is proposing a set of administrative regulations to be adopted by all state racing commissions in order to have uniformity of regulations for horsemen. The president of a "horsemen's organization" has asked you to review, for a fee, the uniform regulations proposed by the Association of Racing Commissioners International.

You ask: *Since the Kentucky Racing Commission belongs to the Association of Racing Commissioners International, is it proper for me to review their suggested regulations as they affect the horsemen, when at the same time, the Kentucky Racing Commission regulates these horsemen and may have good cause to support different versions of the same regulations?*

KRS 11A.005(1)(a) and (c) 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;
.....
(c) A public servant not use public office to obtain private benefits;

KRS 11A.020(1)(a) 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;

The Commission believes that you, as Executive Director of the Racing Commission, which is a member of the Association of Racing Commissioners International, may review the proposed uniform regulations as

part of your official duty with the Racing Commission. However, you may not accept a fee for this review. The acceptance of a fee from a horsemen's organization by the public servant commissioned with the regulation of individuals represented by such organization, presents a conflict of interest. Your duties in the public interest would be in direct conflict with your private interest (horsemen's organization). Therefore, in order to be independent and impartial, you should not review the proposed regulations on behalf of the horsemen's organization.

You state the facts of the second situation as follows. State employees who serve as veterinarians ("vets") for the Racing Commission are responsible for checking a horse's physical condition prior to a race. If the vet determines a horse unfit for racing, then the vet is required to recommend to the stewards that the horse be ineligible to race or "scratched". The vets are sometimes approached by trainers and asked to scratch a horse which is fit, but which they don't want to compete due to the competition on a particular day. Thus, vets are required to make recommendations that affect the economic well-being of horsemen and that directly impact the integrity of racing.

You ask: *May a permanent full-time Racing Commission vet serve as a consultant to a feed supplement company when there is the potential for accusations that the vet scratched, or failed to scratch, a horse because of the trainer's choice of food supplements?*

Although there is no specific prohibition against a state employee serving as a consultant for a company which may do business with a person or business regulated by the employee's state agency, the Commission sees a potential for conflict in such a situation. The Commission recommends the Racing Commission develop a policy to avoid such appearances of conflict.

You state the facts of your final situation as follows. A racetrack is very dependent on competitive racing and having a "full field" of horses. Therefore, the racetrack has a vested interest in the decisions made by vets concerning the scratching of horses. Occasionally a vet may be asked to work for a Kentucky racetrack or the Breeders' Cup (whose president is the chairman of Keeneland).

Your question is *whether a potential conflict might arise if the payment by the track itself for vet services might interfere with the best decisions that might otherwise be made by a Racing Commission vet as it relates to "scratches"?*

The Commission believes that an employee should not accept outside employment from any person or business that is regulated by the state agency for which the employee works. The Racing Commission regulates Kentucky racetracks. The inherent nature of the vet's position puts him in a position to have some influence over racetracks. Additionally, the vested interest of the racetrack poses a conflict situation between the vet's public duty and his private job. Thus, the vet may not work privately for a Kentucky racetrack or the Breeders' Cup.