

Executive Branch Ethics Commission

ADVISORY OPINION 96-1

February 6, 1996

RE: May non-profit corporation, of which state employee is a member of the board of directors, apply for and receive state grants?

DECISION: Yes, as long as grant funds are not used to benefit farm owned by state employee.

This opinion is in response to your October 26, 1995 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 6, 1996, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. Your client is an executive branch employee who has participated in the organization of, is a member of, and sits on the Board of Directors of a non-profit corporation, the Julian Farm Association, Inc. (the "Association"). The purpose of the Association is to promote educational and preservational interests with respect to a historic farm, owned, in part, by your client. The Association intends to apply for grants from governmental agencies, including agencies of the Commonwealth. You ask if there would be any provisions of KRS Chapter 11A which would be implicated by the Association's receipt of state grant funds and the executive branch employee's membership on the Board of Directors. You do not state the place of employment of the executive branch employee, nor do you specify which grants the Association intends to seek.

You have enclosed a copy of the Association's Articles of Incorporation and Bylaws. The Articles of Incorporation state that the Association is a non-profit, non-stock corporation organized under the provisions of Section 501(c)(3) of the Internal Revenue Code, operated exclusively for charitable and educational purposes. Under the Articles of Incorporation, no part of the Association's net earnings shall inure to the benefit of any private shareholder or individual. If the Association is dissolved, KRS 273.303 would require that its assets be distributed to other similar non-profit corporations. You state that the Association is a non-profit, non-stock corporation in which no one has any particular ownership interest.

KRS 11A.010(9)(j) provides:

(9) "Public servant" means:

...

(j) All employees in the executive branch including officers as defined in subsection 7 of this section and merit employees.

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KRS 11A.040(4) states:

(4) No public servant shall 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, or enjoy in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by any state agency. This provision shall not apply to a contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain or to agreements which may directly or indirectly involve public funds disbursed through entitlement programs.

Your client or any entity of which your client owns greater than a 5% interest, is prohibited from having a grant agreement with a state agency. As long as your client, or any other person for his use or benefit, does not own or control an interest of at least 5% of the Association, the Association is not prohibited from applying for and executing a grant agreement with a state agency.

From the facts supplied, it does not appear that your client has an ownership interest in the Association. However, if the employee acquired an ownership interest in the Association over 5%, he would be prohibited from obtaining a grant from any state agency. In addition, any grant funds received should not be used to benefit the historic farm owned by your client. Such use of funds may result in a potential violation of KRS 11A.040(4), because a business of which your client owns more than 5% would benefit from the Association's agreement with a state agency.

If your client or the Association attempts to influence the award of grants in any way, they may be subject to the executive agency lobbying laws in KRS 11A.201-246.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Lynda Thomas, Vice-Chair