

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 96-51
December 17, 1996

RE: May Adjutant General accept complimentary Kentucky Derby Tickets?

DECISION: No.

This opinion is in response to your November 8, 1996 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 17, 1996, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. Churchill Downs traditionally provides complimentary Kentucky Derby tickets to the Office of the Adjutant General, which has authority over the Kentucky National Guard (the "Guard"). Historically, the Guard's involvement with the Kentucky Derby events has been that of law enforcement as well as combating terrorism, communications support, medical support and civil disturbance preparedness. Such involvement has been approved under the Military Support to Civil Authorities (MSCA) program for National and International Special Events. Resources provided are within the national interest for federal mission approval. Military support is provided to local civil authorities based on their requests for assistance.

Typically, the mayor of the city of Louisville requests the Guard to provide personnel support for the Kentucky Derby. The executive authority for providing Guard support for the Kentucky Derby is given by an executive order from the Governor, as authorized in KRS 38.030. The Department of Defense resources in MSCA support of national or international events are used to fund the mission. The Department of Defense policy states that the employment of the Guard military forces is appropriate only when:

- 1) The situation is so severe and so widespread that effective response and support is beyond the capacity of local and state government, and civil resources have been exhausted;
- 2) Required resources are not available from commercial sources. National Guard support will not be furnished if it is in competition with private enterprise or the civilian labor force;
- 3) Commitment of military resources is as a supplement to civil resources that are required to cope with the humanitarian and property protection requirement caused by a civil emergency or mandated by law; and
- 4) Assistance is limited to tasks that, because of experience and the availability of organic resource, National Guard military forces can do more effectively or efficiently than another agency. The capability of military forces to assist in the civil emergency depends primarily on the degree of military or civilian skills possessed by military personnel and/or specialized equipment.

You ask, due to the Guard's involvement with Kentucky Derby events, whether the Adjutant General may accept the complimentary tickets for himself and his family. You also ask whether he may accept such tickets and give them to the Governor or other state and federal officials. Additionally, if the General is precluded from accepting the tickets, you ask if he may purchase the tickets at face value. The tickets in question are for three boxes containing eighteen box seats.

The Commission views this in light of KRS 11A.005(1)(a), (c) and (d) and 11A.020(1)(a) and (d) which state in part:

KRS 11A.005

(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; and

(d) The public has confidence in the integrity of its government and public servants.

KRS 11A.020

(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;

...

(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.

Because the city of Louisville, as well as Churchill Downs, benefits from the support provided by the Guard, the Commission sees a potential conflict of interest for the Adjutant General if he accepts complimentary Kentucky Derby tickets. Although the Adjutant General is not responsible for issuing the executive order which provides assistance to the city of Louisville and Churchill Downs, he is involved in recommending to the Governor whether or not to call the Guard into active duty for the Derby or other events. Although neither a regulatory or business

relationship exists between Churchill Downs and the Office of the Adjutant General, Churchill Downs does wish to secure the services of the Guard each year for the Kentucky Derby, and thus it seeks to influence the decision of the Governor and the Adjutant General. Advisory Opinion 94-63 (a copy of which is enclosed), issued on December 15, 1994, provides that state employees should not knowingly accept gifts or gratuities from entities that lobby or attempt to influence actions or decisions of the agency. Thus, the Commission believes that the Adjutant General should not accept box tickets from Churchill Downs for the Kentucky Derby.

Regarding your question as to whether the Adjutant General may purchase the tickets from Churchill Downs, the Commission has previously addressed a similar question in Advisory Opinion 95-8 (a copy of which is enclosed). In the opinion, issued on March 23, 1995, the Commission concluded that an executive branch employee should not purchase tickets to a sporting event at face value from a vendor if the tickets are not available to the general public or if they have a market value which is greater than their face value. Similarly, unless the box seats for the Kentucky Derby are available to the general public for purchase, and the market value of the tickets is not greater than the face value of the tickets, the Commission believes that you should not purchase the tickets.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Ruth H. Baxter, Chair

Enclosures: AO 94-63
AO 95-8