

ADVISORY OPINION 97-5

February 4, 1997

RE: May Drive Smart® Kentucky accept corporate donations?

DECISION: Yes, as long as corporation is not regulated by or doing business with the Transportation Cabinet.

This opinion is in response to your December 16, 1996 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 4, 1997, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are the Director of Drive Smart® Kentucky, a comprehensive highway safety program within the Transportation Cabinet. You ask whether or not the Transportation Cabinet may accept donations from corporations, in particular Humana Inc., to sponsor this program.

KRS 11A.005(1)(a) and (d) state:

(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;

....

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

In Advisory Opinion 93-56 (a copy of which is enclosed), the Commission advised that a Cabinet should consider the relationship between the entity or association and the Cabinet when soliciting funds from entities in the private sector and trade associations to help sponsor its anti-litter campaign. The Commission stated if the entity or trade association member is a potential vendor to the cabinet or is regulated in a non-ministerial function by the Cabinet, then the solicitation of funds from these entities creates a conflict of interest. Additionally, in Advisory Opinion 96-24, the Commission stated that an agency could not accept donations for its foster care program from local businesses which are regulated by or doing business with the agency.

Thus, it follows that if the corporation wishing to sponsor the Drive Smart® Kentucky program is regulated by or doing business with the Transportation Cabinet, then the acceptance of donations by the Cabinet to sponsor the program is prohibited. Conversely, if a corporation seeking to sponsor the program is not regulated by or doing business with the Transportation Cabinet, then such donation would not be prohibited.

In the specific case of Humana, it does not appear that the Transportation Cabinet does business with or regulates Humana. Although employees of the Transportation Cabinet may have Humana health insurance, such a decision is a personal decision of employees and not one that affects the operation of state government. Additionally, the Transportation Cabinet is not involved in the selection of health insurance vendors which are available for state employees. Thus, the Commission believes as long as no other business or regulatory relationship exists between the Transportation Cabinet and Humana, a corporation donation from Humana may be accepted by Drive Smart® Kentucky.

Enclosure: AO 93-56