

ADVISORY OPINION 98-37

September 3, 1998

RE: May employee of the Kentucky Racing Commission seek outside employment at Keeneland?

DECISION: No.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") on its own initiative. This opinion was adopted at the September 3, 1998, meeting of the Commission.

Executive branch employees have been advised through various advisory opinions to avoid outside employment with certain persons and businesses that do business with the state agency for which an employee works. The issue has been raised whether an Executive Secretary Principal to the Executive Director of the Kentucky Racing Commission may work as a pari-mutuel clerk for the Keeneland Association, Inc., a business that is regulated by the Kentucky Racing Commission.

KRS 11A.040(10) provides:

(10) Without the approval of his appointing authority, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.

(a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.

(b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.

(c) The appointing authority shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.

As required by KRS 11A.040(10) above, the Executive Secretary Principal must obtain approval from her appointing authority for any outside employment she seeks with entities regulated by the Kentucky Racing Commission. The appointing authority is required to review the administrative regulations in 9 KAR 1:050 in determining whether such approval may be given. In reviewing the request for approval, the appointing authority must consider the

degree of separation between the Executive Secretary Principal's job duties and decisions concerning Keeneland made by the Kentucky Racing Commission.

Although the Executive Secretary Principal may not be responsible for making decisions concerning Keeneland as a part of her official duty, she is very much involved in matters which affect Keeneland as secretary to the Executive Director of the Kentucky Racing Commission. Thus, the Commission believes that employment by the Executive Secretary Principal at Keeneland would present the appearance of a, if not an actual, conflict for her, and the Commission advises the appointing authority for the Kentucky Racing Commission not to grant approval for such outside employment.