

Executive Branch Ethics Commission  
**ADVISORY OPINION 11-03**  
March 8, 2011

**GIFTS EXCEPTION NO. 2011-1**

**RE:** May the Kentucky Horse Racing Commission accept, as an exception to the gifts rule provided for in KRS 11A.045(1), access to a nationwide database containing licensing and rule infractions data, horse ownership data, and horse performance data from a company with which they do business?

**DECISION:** Yes.

This opinion is issued in response to your January 21, 2011 request for an exemption to KRS 11A.045(1) from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 8, 2011 meeting of the Commission and the following opinion is issued.

You provide relevant facts as follows. The Kentucky Horse Racing Commission ("KHRC") has jurisdiction over all pari-mutuel horse racing in Kentucky. In KRS 230.215(2), the Kentucky General Assembly vested the KHRC with "forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth..."

As part of this broad mandate, the KHRC oversees and administers the state's breeder incentive programs, including the Kentucky Thoroughbred Breeders' Incentive Fund ("KBIF"). KBIF is funded through a percentage of the sales tax paid on breeding a stallion to a mare in Kentucky. Money from the fund is awarded each year to breeders of eligible horses winning eligible races. In order to be eligible to participate in KBIF, breeders must "nominate", or enroll, their mares in the KBIF program.

In order to validate that a mare is eligible to participate in KBIF, the KHRC contracts with The Jockey Club Information Systems, a wholly owned subsidiary of The Jockey Club, to access identifying information for Thoroughbred horses. Pursuant to 810 KAR 1:070 Section 1 (17), in order to participate in KBIF, a breeder must be registered as the "breeder of record as listed in Jockey Club records". In order to assure compliance with this regulation, the KHRC currently has an active contract with The Jockey Club to provide the necessary information required to administer KBIF.

The Jockey Club, headquartered in Lexington, Kentucky, was formed in 1894 and is the breed registry for Thoroughbred horses in the United States, Canada, and Puerto Rico. The organization also maintains *The American Stud Book*, which includes all Thoroughbreds foaled in the United States, Canada and Puerto Rico as well as Thoroughbreds imported into those countries from nations around the world that maintain similar Thoroughbred registries. The Jockey Club is the only official registry in North America.

In addition to the registry, The Jockey Club provides support to the industry through various technology systems. For example, The Jockey Club formed a technology solutions company, InCompass, in 2001 to centralize the software applications and systems that serve North American racetracks and simulcast outlets.

The Jockey Club is now proposing a new initiative to coordinate the management of licensing and rule infractions data through InCompass. The Jockey Club will partner with the Association of Racing Commissioners International (“ARCI”), also headquartered in Lexington, Kentucky, to create and implement this project. ARCI is the North American umbrella organization for state regulatory agencies. Every racing jurisdiction in North America, including Kentucky, is a member of and pays annual dues to ARCI. Part of ARCI’s mission is to promote uniformity in the rules of racing across the various states and to create opportunities for states to share resources and reduce expenses. According to your request, the new initiative proposed by The Jockey Club and ARCI will significantly improve the KHRC’s licensing system and reduce its costs.

In order to participate in horse racing in any particular state, a person must have a license from that state. With regards to rule violations, most states recognize a suspension given in another state; e.g., if a person is suspended in Florida, they cannot get a license in Kentucky until their suspension period is over. From an integrity and safety standpoint, you indicate that it is imperative that states have information about the people to whom they issue licenses. Presently, states maintain their own records and databases on licensing and rule infractions. ARCI has attempted to create a database, but they do not have the staffing to ensure its accuracy and completeness. Therefore, states often duplicate efforts and waste valuable time investigating potential licensees. The Jockey Club has the staff and the technology to create a secure module that will include licensing and rule infraction data to all racing jurisdictions in North America. The database will also provide access to information about horse ownership and a horse’s past performance data. While the project would be a partnership between The Jockey Club and ARCI, in order to protect private information, each jurisdiction wishing to participate would be required to enter into a contract with The Jockey Club.

According to your letter, in addition to improving the integrity and efficiency of the KHRC’s licensing system, the database, to be provided free of charge, would eliminate the need for the KHRC to design, update and maintain its own database. As such, this project presents a significant cost savings opportunity for the KHRC.

The Commission takes notice that KRS 230.260 gives the KHRC jurisdiction over participants in Kentucky horse racing activities by requiring participants to be licensed, and provides that the KHRC may exclude individuals from participating in horse racing activities if the individual's conduct or reputation is such that his involvement reflects on the honesty and integrity of horse racing or interferes with the orderly conduct of horse racing. KRS 230.260(6) permits the KHRC to require an applicant for a license to submit to a background check, and KRS 230.310(1) provides that the KHRC "may issue a license if it finds that the financial responsibility, age, experience, reputation, competence and general fitness of the applicant to perform the activity permitted by a license are consistent with the best interest of racing and the maintenance of the honesty, integrity and high quality thereof." License applicants must give consent to the KHRC to investigate his or her criminal background, employment history, and racing history record; engage in research and interviews to determine the applicant's character and qualifications; and verify information provided by the applicant. 801 KAR 1:025 Section 8.

Since the KHRC currently does business with The Jockey Club, the KHRC is seeking a gift exception in order to take advantage of The Jockey Club's proposed project.

The relevant statute is KRS 11A.045(1), which provides:

(1) No public servant, his spouse, or dependent child knowingly shall accept any gifts or gratuities, including travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five dollars (\$25) in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

KRS 11A.010(5) further provides:

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; "gift" does not include gifts from family members, campaign contributions, or door prizes available to the public;

The KHRC has a contract with The Jockey Club. The Commission's long-standing interpretation of KRS 11A.045(1) prohibits state agencies (in addition to state employees) from accepting gifts, as defined above, from persons or businesses with which they do business. See,

for example, Advisory Opinion 02-2 (a copy of which is enclosed), in which the Commission concluded that an agency should not accept donations of items and services from persons or  
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businesses that were seeking to do business with that agency. While the Commission has granted exceptions to this general rule in the past, where such exemptions would not create an appearance of impropriety, these exceptions have been rare and have generally been granted due to certain unique circumstances that were involved.

The Commission does not believe that an appearance of impropriety would be created by granting your request for an exception in this instance for the following reasons: 1) the gift is to an agency rather than an individual; 2) access to the electronic database will not benefit any single employee at the KHRC; 3) while access to the electronic database does have a value to the agency, the true beneficiary of this access is Kentucky's horse racing industry as a whole; 4) the vendor would not necessarily gain any future benefit from the gift because The Jockey Club is uniquely situated to provide services to the industry; 5) the KHRC is an existing customer of the vendor; and 6) the electronic database will be available to the horse racing regulatory authorities of all participating states.

For these reasons, the Commission grants your request for an exception to KRS 11A.045(1).

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Chair: Ronald L. Green

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