

Executive Branch Ethics Commission
ADVISORY OPINION 11-07
September 19, 2011

RE:

1. a. Whether it is permissible for the Kentucky Retirement Systems (KRS) to allow the Kentucky Public Retirees Organization (KPR) to insert an informational brochure, including a membership form, in a KRS publication?
b. If so, may KPR pay for the expense of including a brochure in the KRS publication?
2. Alternatively, whether it is permissible to sell advertising space to KPR in a KRS publication?
3. Whether it is permissible to include a link to the KPR website on the KRS website?
4. Whether it is permissible to place KPR brochures in the lobbies of KRS buildings?
and
5. If the KRS is allowed to provide any of the above to KPR, would this obligate KRS to provide similar opportunities to other organizations, individuals or corporations?

DECISION:

1. a. No
b. No
2. No
3. No
4. No
5. Each such proposal must be reviewed on a case by case basis to determine whether such proposal would benefit the entire Commonwealth.

This opinion is issued in response to your August 19, 2011 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 19, 2011 meeting of the Commission and the following opinion is issued.

You provide relevant facts as follows. The KPR is a non-profit organization comprised of retired public employees who participated in the Kentucky Employees Retirement Systems, the State Police Retirement System, or the City/County Retirement System. The goals of KPR include protecting and improving retirement benefits of retired government workers and representing and promoting the interests of retirees before the legislature, the Kentucky Retirement System, and other state agencies.

The KRS publishes a Membership Newsletter approximately twice a year and other publications, which are sent to both active members and retirees. KRS does not allow advertisements in its publications. KPR has requested the KRS to allow it to insert a one-page

Executive Branch Ethics Commission
ADVISORY OPINION 11-07
September 19, 2011

information brochure and membership application in the newsletter. KPR has offered to provide funds to cover the costs of such an addition. In the alternative, KPR has asked for the opportunity to purchase advertising space in the newsletter.

KRS 11A.005(1) provides:

- (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;
 - (b) Government policy and decisions be made through the established processes of government;
 - (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)(d) provides:

- (1) No public servant, by himself or through others, shall knowingly:
 - ...
 - (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.

In order to determine whether KRS and KPR, a not-for-profit organization, may enter into an agreement to promote KPR's membership initiative, the Commission must determine whether the advertising agreement would amount to KRS impermissibly endorsing a private entity. The Commission has previously distinguished "partnering" from "endorsing." Following the Commission's review, an agency may enter into an agreement with a private entity in a program that will benefit the entire Commonwealth, or will promote economic development or tourism in the state. An agency may not "endorse" a private company by publicly and actively promoting one private company over another. See Advisory Opinion 09-20.

KPR is a unique organization representing the interests of retired public workers. KPR actively lobbies the legislature and the KRS for legislation to benefit its membership and the interests of retired government workers and active members. However, these interests do not necessarily promote a benefit to the entire Commonwealth and would result in an impermissible endorsement of KPR by the KRS. Therefore, the KRS should not include the informational brochure and membership application in its newsletter.

Executive Branch Ethics Commission
ADVISORY OPINION 11-07
September 19, 2011

In response to your question of whether KRS and KPR may sell advertising space to KPR in a KRS publication, include a link to the KPR website on the KRS website, and place KPR brochures in the lobbies of KRS buildings, the Commission has consistently stated that a state agency should not publicly and actively recognize a private product or company, or acknowledge a corporate donor, in a public manner such as in the newspaper or on television. See Advisory Opinions 02-21 and 07-27. Therefore, such actions would amount to an impermissible public and active endorsement of KPR.

As to how this decision affects the KRS's ability to enter into a similar agreement with another organization, individual, or corporation, the Commission recommends that each individual scenario be approached on a case-by-case basis for a determination of whether the proposed agreement would benefit the entire Commonwealth and not just a select few.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Ronald L. Green

This document was created with Win2PDF available at <http://www.win2pdf.com>.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.
This page will not be added after purchasing Win2PDF.