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ADVISORY OPINION NO. 2011-09

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Guidelines For Lobbyists/Thing Of Value/
Items Provided To Public Officials And
Public Employees

There is nothing in the revised Ethics Law which prohibits an individual from simultaneously serving as both a lobbyist and a principal.

There is no requirement that the individual signing on behalf of the principal be an officer of the association. The important consideration in determining who signs as the principal's representative is that the individual is easily identifiable as a person with the authority to speak on behalf of the association.

Lobbyists and/or principals may not "stack" their expenditures to increase the \$25/\$50 cap, regardless of whether or not they are lobbying on the same issue or employed by the same principal.

Public officials/public employees may receive promotional items, items created for presentation, or other items of de minimus value.

The Ethics Commission cannot arbitrarily assign a value to what is and what is not de minimis.

Door Prizes

Public officials and public employees may accept door prizes; provided, acceptance of the door prize requires no affirmative action on their part; that it is not given in exchange for official action; and where the door prize is incidental to their attendance at the conference/ seminar.

Educational function/Widely Attended Event

An educational function is limited by definition to taking place in the State of Alabama, unless a majority of attendees are from elsewhere, and then it may occur anywhere within the continental United States.

An educational function, where more than 12 individuals are reasonably expected to be in attendance and will have a diversity of views and opinions, becomes a widely attended event.

There is no limitation as to where a widely attended event may take place.

A widely attended event is not a purely social or recreational event. Because of the requirement of a diversity of views or

interests, there must be some educational or informational component to the widely attended event.

Work Session

A work session is an event where a group of public officials/public employees are gathered together in their official capacity to further the public's interest.

The only hospitality that may be provided at a work session is food and beverages. Food and beverages may be provided to allow the work being conducted to continue, thereby furthering the public's interest.

Hospitality in the form of social or sporting events (golf, fishing, etc.) may not be provided at a work session, as these activities change the dynamic of the meeting from a work session to a purely social occasion.

While sponsors may provide food and beverages at work sessions, a lobbyist may not be solicited to do so.

Sponsors may not provide food and beverages at work sessions, if it is being offered in exchange for official action on the part of the public participants.

The revised Ethics Law excludes from the definition of a thing of value, any thing given as part of a relationship that exists outside the public sector, i.e., a pre-existing friendship, or familial relationship.

The \$25/\$50 limit on food and beverages applies only to expenditures made by

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lobbyists and principals, and where the occasion does not fall under any of the other exceptions to the definition of a thing of value.

If a lobbyist/principal, or a public official/public employee knowingly and willfully disregards the \$25/\$50 spending limit, a violation of the Ethics Law has occurred.

Public officials and public employees may participate in charitable events, such as golf tournaments; provided, there is an educational or informational component to the event.

A primary sponsor of an event may pay entry fees and provide hospitality for a participant at events falling under the exceptions to the definition of a thing of value.

Public officials/public employees may participate in social events with lobbyists/principals/vendors, etc.; provided, they pay any costs associated with their participation.

Dear Mr. McDonald:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion of this Commission, and this opinion is issued pursuant to that request.

FACTS AND ANALYSIS

The facts as have been presented to this Commission are as follows:

Jones Walker is counsel for the Alabama Council of Association Executives (“ACAEE”), which represents numerous trade associations, lobbyists and principals from around the state. The members of ACAEE are aware, of course, of the 2010 amendments to the Code of Ethics which became effective March 16th of this year. ACAEE has been actively monitoring the

Advisory Opinions issued to date relating to the Ethics Commission's interpretation of the new enactments.

ACAIE's members wish to understand and comply with the new provisions, but there remain areas of uncertainty about certain provisions. Also, the new legislation left obvious gaps that remain to be filled by Advisory Opinions or regulations.

For this reason, ACAIE has compiled the following list of frequently asked questions pertaining to the new provisions. ACAIE respectfully requests the Ethics Commission to provide further official guidance in these areas as it will greatly facilitate ACAIE's, and the general public's understanding and appreciation, of these new provisions. The questions presented are outlined below:

1. The December, 2010 amendments to the Code of Ethics redefined the definition of a principal, striking language which permitted a principal to simultaneously also serve as his or her own lobbyist. The new law now states that a principal is not a lobbyist. Many trade associations' executive directors, who serve as principals also serve as the lobbyist for that association. The executive director of the association is also the person most familiar with the association's day-to-day lobbying activities.

- Can the association's executive serving as a lobbyist also execute and file lobbying forms as principal even though he is also serving as the full time lobbyist for the association?
- Is it a prerequisite that, before signing as principal for his association, the executive be made formally an officer of the association?
- If it is not appropriate for the association executive to execute the principal forms required to be filed, who within the organization should sign as principal inasmuch as most of the officers of the associations are just volunteers who are not familiar with the day-to-day lobbying activities of the organization?
- Many associations employ contract lobbyists. Can the association executive sign as a principal for their association for their contract lobbyist?

Section 36-25-1(19) defines lobbying as:

"The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner

influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body. The term does not include providing public testimony before a legislative body or regulatory body or any committee thereof.”

Section 36-25-1(20) defines lobbyist as:

- “a. The term lobbyist includes any of the following
1. A person who receives compensation or reimbursement from another person, group or entity to lobby.
 2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.
 3. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.
 4. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.
- b. The term lobbyist does not include any of the following:
1. An elected official on a matter which involves that person’s official duties.
 2. A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.
 3. Reporters and editors while pursuing normal reportorial and editorial duties.

4. Any citizen not expending funds as set out above in paragraph a.3. or not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a particular issue or on particular legislation, or for the purpose of influencing the legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.
5. A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.
6. A person whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess.
7. A person who is a member of a business, professional, or membership organization by virtue of the person's contribution to or payment of dues to the organization even though the organization engages in lobbying activities.
8. A state governmental agency head or his or her designee who provides and/or communicates information relating to policy and/or positions affecting said governmental agencies which they represent."

There is nothing in the definition of lobbying or lobbyist which prohibits a principal from also being a lobbyist.

Section 36-25-1(23) defines principal as:

"A person or business which employs, hires, or otherwise retains a lobbyist. A principal is not a lobbyist but is not allowed to give a thing of value."

1(a). There has been much confusion about some of the changes made in the December Special Session. Prior to the Special Session, the definition of a principal was:

"A person or business which employs, hires, or otherwise retains a lobbyist. Nothing in this chapter shall be deemed to prohibit a principal from simultaneously serving as his or her own lobbyist."

The definition was changed in December and now reads as stated above.

As stated, this section is somewhat confusing. However, striking the language that a principal was not prohibited from simultaneously serving as his or her own lobbyist, does not mean that this activity is now prohibited. In order to prohibit activity, it must be clearly spelled out, so that affected individuals can easily understand what is and what is not prohibited. In addition, there are some lobbyists who are sole practitioners, who have no other way of doing business but to be their own principal and lobbyist.

What is intended by the change, is that being a principal does not automatically make one a lobbyist. One must register as a principal, just as one must register as a lobbyist. While they are not mutually inclusive, registering as one does not prohibit registration as another. However, even though a principal is not automatically a lobbyist, they still are prohibited from giving a thing of value as set out in Section 36-25-5.1.

Section 36-25-5.1 states:

“(a) No lobbyist, or subordinate of a lobbyist or principal shall offer or provide a thing of value to a public employee or public official or to a family member of the public employee or family member of the public official; and no public employee or public official or family member of the public employee or family member of the public official shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist or principal. Notwithstanding the foregoing, a lobbyist or principal may offer or provide and a public official, public employee, or candidate may solicit or receive items of de minimis value.”

“(b) A lobbyist does not provide a thing of value, for purposes of this section, merely by arranging, facilitating, or coordinating with his or her principal that is providing and paying for those items.”

- 1(b). There is no prerequisite that an executive be made formally an officer of an association before signing-off as principal. The purpose is that all lobbyists have easily identifiable principals. Whether or not they are an officer of the association is not nearly as important as whether or not they are identifiable and answerable as an individual with the authority to speak on behalf of the association.
- 1(c). See analysis above.
- 1(d). See analysis above.

2. One of the exceptions to the definition of thing of value is food and beverages provided to a public official or employee which are not a part of an educational function or other recognized exception. In that event, the limit for a lobbyist for such a function is \$25.00 per meal with an aggregate annual limit of \$150.00 per year and the limit for a principal is a limit of \$50.00 per meal with an aggregate limit of \$150.00 per year.

- Since the limits appear to be per lobbyist or per principal, if several lobbyists are together or, if a lobbyist and his principal are together, can they stack their respective limits so long as each lobbyist or principal stays within their respective limit?
- If the lobbyists are unaffiliated with one another and are not working on a common issue, would that impact the outcome of the stacking issue?

Section 36-25-1(33) defines thing of value as:

“a. Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event, unsecured loan, other than those loans and forbearances made in the ordinary course of business, reward, promise of future employment, or honoraria or other item of monetary value.”

Section 36-25-1(33)(b)(16) states:

“b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

16. Meals and other food and beverages provided to a public official or public employee in a setting other than any of the above functions not to exceed for a lobbyist twenty-five dollars (\$25) per meal with a limit of one hundred fifty dollars (\$150) per year; and not to exceed for a principal fifty dollar (\$50) per meal with a limit of two hundred fifty dollars (\$250) per year. Notwithstanding the lobbyist’s limits herein shall not count against the principal’s limits and likewise, the principal’s limits shall not count against the lobbyist’s limits.”

2(a). A concept that has been artificially created since the Special Session is that of “stacking.” Stacking is where several lobbyists, who otherwise would be limited to expending \$25 on a public official or public employee per meal, will “stack” the \$25 limit in order to better entertain the public official or public employee, i.e., 3 lobbyists = \$75 per meal.

Regardless of whether or not the lobbyists are employed by the same principal, or are dealing with the same issues, stacking violates the very intent and spirit of the Alabama Ethics reforms. Section 36-35-1(33)(b)(16) limits expenditures to \$25 per meal. If the Legislature intended lobbyists to be able to “stack” their expenditures, they would have said so. The same rationale applies for expenditures by principals.

2(b). See analysis above.

3. The Legislature also adopted an exception to the definition of a thing of value for gifts of “de minimus value.”

- It is common in the legislature for different industries to provide examples of their food or products to legislators or to give away promotional items such as mugs, pens, pads of paper, notebooks and the like. Other organizations provide turkeys or hams, and some, plants or flowers, during a holiday season. Typically all legislators will receive these items delivered to their offices. Are these considered de minimus items by the Ethics Commission and, if not, what does the Ethics Commission consider a de minimus item?

Section 36-25-1(33)(b)(4) states:

3. “b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

4. Greeting cards, items, services with little intrinsic value which are intended solely for presentation (such as plaques, certificates, and trophies), promotional items commonly distributed to the general public, and items or services of de minimis value.”

The prior Ethics Law had specific exceptions relating to not only promotional items, but seasonal gifts as well. The current exceptions limit that to items for presentation, promotional items, or items of de minimis value. The law does not define what de minimis is and the Ethics Commission will not arbitrarily establish an amount.

The test is whether or not the item being given has any resale value or value to others.

Items such as plaques, certificates and other presentation items have no value to anyone other than the recipient of the award. Promotional items, such as coffee cups, ball caps, etc., have little or no monetary value and exist for the purpose of advertising, public relations, goodwill, etc. On the other hand, gifts such as turkeys and hams given as seasonal gifts, do have a monetary value. Due to the fact that the exception for seasonal gifts was removed from the

Ethics Law during the Special Session, it is the Commission's opinion that the practice of giving turkeys, hams, etc. to public officials during the holiday season is no longer permissible.

Again, the only quantifier the Commission will put on what is and what is not de minimis is whether or not the item has any resale or monetary value.

4. The legislature excepted rewards and prizes, including random drawings, which are open to the public, from the definition of thing of value. It is common for trade associations at their annual meetings and conventions, to which public officials or public employees may be invited, to provide random door prizes which are typically awarded to registered attendees in order to encourage attendance.

- If a public official or public employee attends an authorized meeting such as an educational function, can a door prize be awarded at random to a public official or public employee?

4. The Commission has addressed the issue of door prizes several times in the past.

Advisory Opinion No. 2000-63 held that:

"The Assistant Director of the Alabama Electronic Benefit Transfer Project for the Alabama Department of Human Resources may accept a door prize won in conjunction with her attendance at a conference/seminar which she attended as a representative of the Department of Human Resources; provided, that acceptance of the door prize required no affirmative action on her part; that it is not given in exchange for official action; and, where the door prize is incidental to her attendance at the conference/seminar."

Advisory Opinion No. 2005-14 held that:

"A candidate/elected official may accept a cash prize given through a random drawing at a charity event; provided, that all individuals attending the function have the same opportunity to win; and, that nothing is required of the candidate/elected official to be eligible other than his or her attendance at the event."

Door prizes under the circumstances as set out in the above question are specifically permitted by Section 36-25-1(33)(b)(7), which states as follows:

"7. Rewards and prizes given to competitors in contests or events, including random drawings, which are open to the public."

5. The legislature's definition of an educational function is limited to meetings held within the state of Alabama unless the function is predominantly attended by participants from other states.

Many Alabama trade associations hold their events outside Alabama. Nevertheless, their formal programs or agendas with speeches, debates, panel discussions and the like are presented. On the other hand, the legislature defined a widely attended event in a broad manner such that a gathering of 12 or more individuals with a diversity of views or interests would be considered a widely attended event. At widely attended events, the exceptions to the definition of thing of value in subsections (12) and (14) permit reimbursement for transportation and lodging expenses, as well as hospitality meals and food, in connection with such widely attended events.

- Can meetings and functions held outside of Alabama, which are similar in nature to education functions, be attended by a public official and public employee, with reimbursement of their transportation and lodging expenses, as well as hospitality meals and food, in connection with a widely attended event?
- Widely attended events are limited in two respects. First, more than 12 individuals must attend; and second, those individuals must have a diversity of views or interests that will be present. How does the Ethics Commission determine whether individuals with a diversity of views or interests will be present and how is that interpreted?
- A meeting held out-of-state such as described above, in which public officials or public employees might attend, would typically be an industry meeting. Would this constitute a diversity of interests or views as required by the legislature's definition of a widely attended event?

Section 36-25-1(12) defines Educational Function as:

“A meeting, event, or activity held within the State of Alabama, or if the function is predominantly attended by participants from other states, held within the continental United States, which is organized around a formal program or agenda of educational or informational speeches, debates, panel discussions, or other presentations concerning matters within the scope of the participants' official duties or other matters of public policy, (including social services and community development policies) economic development or trade, ethics, government services or programs, or government operations, and which, taking into account the totality of the program or agenda, could not reasonably be perceived as a subterfuge for a purely social, recreational, or entertainment function.”

Section 36-25-1(35) defines Widely Attended Event as:

“A gathering, dinner, reception, or other event of mutual interest to a number of parties at which it is reasonably expected that more than 12 individuals will attend and that individuals with a diversity of views or interest will be present.”

In most cases, what may be intended as an educational function will become a widely attended event by virtue of the number of individuals attending, as well as the diversity of views present. A function may be both an educational function and a widely attended event.

While an educational function must take place in the state of Alabama (unless the majority of attendees are coming from elsewhere), there is no such limitation on location as relates to a widely attended event. Therefore, an educational function that is also a widely attended event may take place anywhere, i.e., a widely attended event trumps an educational function.

A public official or public employee may have his or her expenses (transportation, lodging, etc.) reimbursed or provided by a primary sponsor of the event. A third party may not pay the expenses, but a primary sponsor may.

As it is entirely subjective and abstract, the Ethics Commission has no methodology to determine whether a diversity of views or interests is present, other than a common sense approach. That being, if you have 12 or more people present, you will by human nature, have a diversity of views and opinions.

At this juncture, it is important to point out what is and what is not a widely attended event. A widely attended event is not a purely social or recreational event. For example, inviting 16 people to play golf or go dove hunting (with no other activities planned) is not a widely attended event.

A widely attended event requires some event of mutual interest. It is reasonable to assume that because of the requirement of an event of mutual interest, as well as a diversity of views or interests among the attendees, there must be some educational or informational component to the widely attended event.

Rhetorically speaking, if there is not an educational or informational component to a widely attended event, why the necessity of having a diversity of views or interests among those attending the event?

It is unimportant whether or not 16 people on a golf course share the same views or opinions. It is relevant that attendees at a panel discussion or seminar have a diversity of views and opinions.

6. The legislature permits the provision of hospitality meals, food and beverages to a public official or public employee at a work session. There is no definition provided by the new legislation although the exception indicates that it would be similar to a luncheon, banquet or reception hosted by a civic club, Chamber of Commerce, charitable or educational organization, or trade or professional association.

- How does the Ethics Commission define work session?
- It is clear that meals, food and other beverages may be provided at a work session but it also indicates that “hospitality” may be provided at a work session. What type of hospitality does the Ethics Commission consider appropriate to be provided at a work session? Could hospitality such as golf, fishing, tennis or other such entertainment be provided prior to, after, or during the course of the work session?
- On occasion, public employees involved in procurement will be invited out-of-state by a potential vendor to be provided a demonstration or review of a new product or service. Often, these products or services cannot be brought into Alabama by the vendor due to their size or other features which necessitates for review of the product or service at the home office or plant of the vendor. The vendor will commonly offer to pay for the travel, hotel and meal expenses during this process. Is this trip considered a work session and, if so, can the public employee’s expenses associated with the trip be reimbursed by the vendor? Can any other hospitality during this trip be provided to public employees?
- If a legislative caucus holds a meeting and requests a trade association or lobbyist to sponsor a meal in connection with their meeting, may food and beverages be provided to such legislative meeting or legislative caucus as constituting a work session?

6(a) The Ethics Commission has not defined a work session except in certain contexts. In Advisory Opinion No. 2011-05, the Commission held that:

“During the course of a project, a member of the Alabama Road Builders Association may provide a meal for the Alabama Department of Transportation (ALDOT) personnel to discuss problems or issues that have arisen during a specific project in an effort to resolve the problems, as this would be a work session under the Alabama Ethics Law.”

The opinion went on to state:

“Association members may provide a meal to ALDOT personnel in relation to a meeting to discuss future projects, new equipment, materials, proposed construction techniques, etc., as this could be considered a work session. . .”

It appears clear from a reading of the new Ethics Law that a work session is any event where a group of public officials/public employees are working on a matter affecting the public interests. It is well within the public’s interest that public officials/public employees are able to continue working on the matter affecting the public; therefore, it is reasonable to have a meal or refreshments provided to them, so that the work may continue.

6(b) That opinion went on to state:

“. . .hospitality may not be provided in conjunction with this meal, as hospitality would not be an integral part of the meeting.”

As set out in this opinion request, it is clear that golf, fishing, tennis or other such entertainment events by their very nature, cannot be part of a work session. They are purely social/recreational events and do nothing to further the public’s interest.

Again, hospitality is an undefined term in the Ethics Law and its meaning is dependent on the circumstances. For example, hospitality that is part of a widely attended event, such as a conference can take the form of a golf outing, fishing trip, etc. This same interpretation does not work when dealing with the concept of a work session.

By approaching the question rationally, the hospitality that may be provided at a work session is limited to food and beverages, i.e., something to enable the work to continue. There are no circumstances where a game of golf, a fishing trip or a football game will allow the work being conducted to continue, or otherwise provide a public benefit.

6c. This question was specifically covered under the old Ethics Law in Section 36-25-1(31)(b)(4), which stated:

“b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

4. Reasonable transportation, food and beverages where the provider is present, and lodging expenses in the continental United States and Alaska which are provided in conjunction with an educational or informational purpose, together with any hospitality associated therewith; provided, that such hospitality is less than 50 percent of the time

spent at such event, and provided further that if the aggregate value of such transportation, lodging, food, beverages, and any hospitality provided to such public employee, public official, and his or her respective household is in excess of two hundred fifty dollars (\$250) within a calendar day the total amount expended shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.”

There is no comparable section contained in the new exceptions; however, this could conceivably be construed as a work session. It clearly is work related. Similar to the old section, the public employee’s expenses may be reimbursed by the vendor (provided, there is no understanding that the vendor will get the contract because they are providing the trip to the public employee.) Without specific examples, the Commission will not put any limits on this, but will say that a limited amount of hospitality during the trip may be provided, depending on the circumstances. Regardless, it must be reasonable under the circumstances.

As relates to question 6(d), a lobbyist may not be solicited by a legislative caucus for anything other than campaign contributions.

Section 36-25-23(b) states:

“No public official, public employee, or group of public officials or public employees shall solicit any lobbyist to give any thing whether or not the thing solicited is a thing of value to any person or entity for any purpose other than a campaign contribution.”

While a trade association or lobbyist may sponsor a meal in connection with a work session, they may not be solicited to do so.

For a deeper analysis, see question 10.

7. Frequently, public officials or public employees have good working relationships with trade associations’ executives, lobbyist and principals. These relationships extend beyond their official duties and often become personal, or personal relationships exist before the person becomes a public official or public employee.

- If a lobbyist, principal or trade association executive engages in a leisure activity with a public official or public employee such as golf or fishing, if each individual pays for their own cost associated with the leisure activity, does the public official or public employee have to also pay his portion of the transportation expenses associated with the leisure activity?

One major inclusion in the revised Ethics Law is the exception for anything given through a friendly relationship. It must be an actual relationship and may not be a sham. Set out in the statute as one relevant factor is, did the friendship pre-exist the recipient's status as a public employee or official.

The scenario set out in question seven, however, by its nature, implies that there is not a pre-existing friendly relationship.

In social events, such as golfing or fishing, a public official or public employee may participate with a lobbyist, vendor, etc., provided, they pay their own costs. This would include their fair portion of transportation expenses associated with the leisure activity.

On the other hand, transportation is not a factor if there is a pre-existing friendly relationship, as anything given under the circumstances is not considered a thing of value.

8. As previously discussed, the legislature provided a general exception to the definition of a thing of value for meals, food and beverages, not associated with any other approved functions, in which case lobbyists are limited to \$25.00 per meal and principals are limited to \$50.00 per meal.

- If someone other than a principal or lobbyist pays for meals, food and beverages of a public official or public employee in a setting that is not one of the other approved exceptions to thing of value, such as an educational function, is there a limit on that individual's expenditure?
- Assume that a public official or public employee is in attendance at an educational function held by a trade association. A member of the trade association, who is neither a lobbyist nor principal, invites a public official or public employee to an off-site dinner. Is there a limit associated with the expenditure for that dinner?

Would the answer be different if the association executive who is a lobbyist, or someone who signs as principal for the trade association, is also in attendance at the dinner?

The \$25/\$50 limits set out in Section 36-25-1(33)(b)(16) apply only to lobbyists and principals. They do not apply to anyone other than a lobbyist or a principal, regardless of the setting.

As to question 8(b), the same applies. The \$25/\$50 limits apply only to lobbyists and principals.

In determining whether or not the \$25/\$50 limits apply, it depends on the context.

If a lobbyist/principal is taking a public official or public employee to dinner in relation to an event, or they are both in attendance at the conference, then it should be considered related to the overall event.

If, on the other hand, the lobbyist/principal is not participating in the event, but is merely using this as an opportunity to take a public official/public employee to dinner, the \$25/\$50 limits would apply.

9. The longstanding law in Alabama, pursuant to Section 36-25-5, was that a public official or public employee cannot use their official office to obtain personal gain. The legislature added a new provision, Section 36-25-5.1 prohibiting a lobbyist or principal from offering a thing of value to a public official or public employee. Public officials and public employees, likewise, are prohibited from soliciting anything of value from a lobbyist or principal.

- Is it permissible for the member of a trade association who is not a lobbyist and not a principal to take a public official or public employee to dinner?

If so, are there limits to what may be expended on that dinner or are there limits on what may be discussed at that dinner?

- If there are limits, which are not observed, is it the Ethics Commission's opinion that personal gain has been provided to the public official or public employee in violation of Section 36-25-5?

When the law was amended in December 2010, Section 36-25-7 was very problematic. It stated as follows:

“(a) No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive anything for the purpose of influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

(b) No public official or public employee shall solicit or receive anything for himself or herself or for a family member of the public employee or family member of the public official for the purpose of influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

(c) No person shall offer or give a family member of the public official or family member of the public employee anything for the purpose of influencing official action, regardless of whether or not the thing offered or given is a thing of value.

(d) No public official or public employee, shall solicit or receive any money in addition to that received by the public official or public employee in an official capacity for advice or assistance on matters concerning the Legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member. Notwithstanding the foregoing, nothing in this section shall be construed to prohibit a public official or public employee from the performance of his or her official duties or responsibilities.”

During the Regular Session, the word “corruptly” was inserted as follows:

“(a) No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive anything for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

(b) No public official or public employee shall solicit or receive anything for himself or herself or for a family member of the public employee or family member of the public official for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

(c) No person shall offer or give a family member of the public official or family member of the public employee anything for the purpose of corruptly influencing official action, regardless of whether or not the thing offered or given is a thing of value.

(d) No public official or public employee, shall solicit or receive any money in addition to that received by the public official or public employee in an official capacity for advice or assistance on matters concerning the legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member. Notwithstanding the foregoing, nothing in this section shall be construed to prohibit a public official or public employee from the performance of his or her official duties or responsibilities.

(e) For purposes of this section, to act ‘corruptly’ means to act voluntarily, deliberately, and dishonestly to either accomplish an unlawful end or result or to use an unlawful method or means to accomplish and otherwise lawful end or result.”

As relates to question 9(a), a member of a trade association who is not a lobbyist or a principal, may take a public official or public employee to dinner. There are no limits as to what may be expended on that dinner, if the individual is not a lobbyist or a principal. If they are a lobbyist or a principal, the \$25/\$50 limits apply. There are no limits on what may be discussed at the dinner; however, it may not be used as an opportunity to corruptly influence official actions.

As to question 9(b), if the limits are not observed, a violation of the Ethics Law has taken place.

The Ethics Law is a criminal statute. Conviction of an Ethics violation is a Class B Felony. Therefore, if a public official/public employee and/or lobbyist/principal through means of subterfuge knowingly violates the provisions contained in Section 36-25-1(33)(b)(16), then the Ethics Law has been violated and public office has been used for personal gain.

10. Section 36-25-23(b) of the Ethics Code prohibits a public official or public employee from soliciting from a lobbyist anything "other than a campaign contribution." Public officials, particularly in the Alabama legislature, have organized into various caucuses, many of which are organized either as a limited liability company or a non-profit corporation.

- Is it permissible for lobbyists to be solicited by such caucuses or foundations for a contribution?
- If the legislator cannot solicit lobbyists for contributions to such entities, can they employ by contract a fundraiser to make the solicitations on their behalf?

11. Many associations and their members host annual golf tournaments either for charitable purposes or to raise funds for their own association or its political action committee in order to attract tournament sponsors and players, public officials and public employees are invited. Can the golf tournament under these circumstances described be considered a widely attended event?

- If the tournament is considered a widely attended event, should there be a formal program other than golf? If so, what format should this take? For instance, should there be a speaker prior to or at the conclusion of the event?
- What can be provided at a tournament to a public official or public employee? Can their entry fee be paid by a sponsor, or waived, and can they be provided meals, beverages and hospitality at the event?
- Is there a difference in the analysis if the tournament is for a charitable cause as opposed to a fundraiser for an association's PAC?

As previously stated, a widely attended event is not a social event. A widely attended event is not an exception to the definition of a thing of value, but instead is a defined term under which certain reimbursements, hospitality, etc. may be provided.

In interpreting the revised Ethics Law, the Commission's focus is balancing the ability of charitable organizations and non-profit associations to raise money with the prohibition against any thing being given to public officials and public employees merely because they are public officials or public employees.

Under question 11, as a general rule, a charitable golf tournament will include, at some point in time, an individual or individuals speaking on behalf of the organization. They will set out, for example, how much money was raised the previous year; how the donations are expended; the purposes of the charity, etc. There is no absolute format that must be followed; however, at some point in time during the event, there should be some type of informational component.

At a tournament, entry fees and hospitality in the form of food and beverages, green fees, etc. may be waived or paid by a primary sponsor.

As previously set out, provided the law is followed, door prizes are also acceptable, as are promotional items of a de minimis value.

For purposes of the Ethics Law, there is no difference between a charitable cause and a fund raiser; however, should the event be a fund raiser for a political action committee or a candidate, the Attorney General's Office should be contacted for its input.

CONCLUSION

This opinion has attempted to address as many issues under the new Ethics Law as is possible. While this opinion may not address all foreseeable circumstances, it should provide guidance in most situations. Below are listed the principal's opinion and interpretation of some of these areas.

There is nothing in the revised Ethics Law which prohibits an individual from simultaneously serving as both a lobbyist and a principal.

There is no requirement that the individual signing on behalf of the principal be an officer of the association. The important consideration in determining who signs as the principal's representative is that the individual is easily identifiable as a person with the authority to speak on behalf of the association.

Lobbyists and/or principals may not “stack” their expenditures to increase the \$25/\$50 cap, regardless of whether or not they are lobbying on the same issue or employed by the same principal.

Public officials/public employees may receive promotional items, items created for presentation, or other items of de minimus value.

The Ethics Commission cannot arbitrarily assign a value to what is and what is not de minimis.

Public officials and public employees may accept door prizes; provided, acceptance of the door prize requires no affirmative action on their part; that it is not given in exchange for official action; and where the door prize is incidental to their attendance at the conference/ seminar.

An educational function is limited by definition to taking place in the State of Alabama, unless a majority of attendees are from elsewhere, and then it may occur anywhere within the continental United States.

An educational function, where more than 12 individuals are reasonably expected to be in attendance and will have a diversity of views and opinions, becomes a widely attended event.

There is no limitation as to where a widely attended event may take place.

A widely attended event is not a purely social or recreational event. Because of the requirement of a diversity of views or interests, there must be some educational or informational component to the widely attended event.

A work session is an event where a group of public officials/public employees are gathered together in their official capacity to further the public’s interest.

The only hospitality that may be provided at a work session is food and beverages. Food and beverages may be provided to allow the work being conducted to continue, thereby furthering the public’s interest.

Hospitality in the form of social or sporting events (golf, fishing, etc.) may not be provided at a work session, as these activities change the dynamic of the meeting from a work session to a purely social occasion.

While sponsors may provide food and beverages at work sessions, a lobbyist may not be solicited to do so.

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Sponsors may not provide food and beverages at work sessions, if it is being offered in exchange for official action on the part of the public participants.

The revised Ethics Law excludes from the definition of a thing of value, anything given as part of a relationship that exists outside the public sector, i.e., a pre-existing friendship, or familial relationship.

The \$25/\$50 limit on food and beverages applies only to expenditures made by lobbyists and principals, and where the occasion does not fall under any of the other exceptions to the definition of a thing of value.

If a lobbyist/principal, or a public official/public employee knowingly and willfully disregards the \$25/\$50 spending limit, a violation of the Ethics Law has occurred.

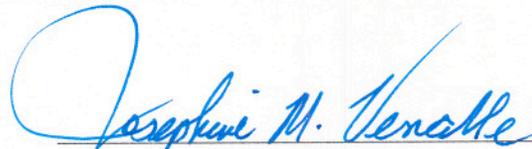
Public officials and public employees may participate in charitable events, such as golf tournaments; provided, there is an educational or informational component to the event.

A primary sponsor of an event may pay entry fees and provide hospitality for a participant at events falling under the exceptions to the definition of a thing of value.

Public officials/public employees may participate in social events with lobbyists/principals/vendors, etc.; provided, they pay any costs associated with their participation.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on October 5, 2011.



Josephine M. Venable
Acting Chair in the absence of the Chair
Alabama Ethics Commission