



STATE OF ALABAMA ETHICS COMMISSION



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February 7, 2018

ADVISORY OPINION NO. 2018-01

Mr. William J. Canary
President and Chief Executive Officer
Business Council of Alabama
P.O. Box 76
Montgomery, AL 36101-0076

Lobbyists/Principals Disclosure
Requirements under Ala. Code § 36-25-
19(a)(1)

Ala. Code § 36-25-19(a) requires the accurate reporting of cumulative spending on pre-certified events, or those which otherwise fall within the exceptions to the definition of "thing of value" which during a 24-hour period exceeds \$250.00. For events in which there are multiple sponsors contributing varying amounts, Section 19 requires each payor to separately assess the value of their contribution per participant and accurately report if necessary.

If there are multiple sponsors for an event for which precertification is sought, then the request for precertification must specify who the sponsors are, if they intend to aggregate and if so, what expenses they intend to aggregate and a list of invitees. If sponsorships are not included in the request, then the Commission will presume that the requestor is the sole sponsor.

Dear Mr. Canary:

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

FACTS

The facts the Business Council of Alabama (BCA) has provided and on which the opinion is based are the following: each year, during the summer, the BCA holds its Governmental Affairs Conference (hereafter "GAC") in Point Clear, Alabama, at the Grand Hotel. The event is typically attended by more than 400 registered guests who are business and government leaders from around the state. BCA solicits and accepts sponsorships from businesses in order to cover the costs associated with the GAC, and generally the Conference has between 30 and 45 sponsors. Sponsors are recognized in conference materials at specific sponsored events and presentations, and via various de minimis sponsor-provided promotional items that are given to conference attendees as part of their registration. Meals, food, and beverages are typically provided to registered attendees as part of the Conference, many of whom are public officials or public employees. Additionally, lodging costs for public officials and employees, as well as their spouses, are also paid for as part of the Conference. The costs of the Conference are primarily covered by attendee registrations and the sponsors of the event. BCA says it does not always expend operating funds for direct costs associated with its GAC. When BCA has expended operating funds on the GAC, BCA states that the amount per attendee is substantially below the \$250 in a 24-hour period amount that would trigger the reporting requirements of Ala. Code § 36-25-19(a)(1).

The GAC has been pre-certified by the Commission as an "educational function," an exception to the definition of "thing of value" for several years pursuant to Ala Code §§ 36-25-1(13) and (34)(b)(12), (14) and (15). Ala. Code § 36-25-19(a)(1) requires principals and lobbyists to disclose:

The cost of those items excluded from the definition of a thing of value which are described in Section 36-25-1(32)b and which are expended within a 24-hour period on a public official, public employee, and members of his or her respective household in excess of two hundred fifty dollars (\$250) with the name or names of the recipient or recipients and the date of the expenditure.

QUESTION PRESENTED

BCA asks the following question: in determining what, if anything, is required to be reported under Ala. Code § 36-25-19(a), what method should be used when there are multiple sponsors?

ANALYSIS

Ala. Code 36-25-19(a) requires the accurate reporting of cumulative spending on pre-certified events which exceed \$250.00 during a 24-hour period. The obligation to report belongs to whoever pays (i.e., the source of the money). Often, sponsors will contribute a certain, undesignated amount for the GAC that goes into a pool out of which various expenses are paid. Although complicated by the existence of numerous sponsors, accurate disclosure by principals and lobbyists in this context is required nonetheless.

In limited circumstances, aggregation among sponsors can be used in relation to general, fixed expenses for a pre-certified event or one that even though not pre-certified falls within the exceptions to Ala. Code § 36-25-1(34)(b). Aggregation can be used when the amount is easy to quantify, is a fixed amount outside the discretion of those paying, and is not being used to violate the stacking restrictions of AO 2011-11. If, for example, a sponsor covers hotel rooms for public officials, then that amount is fixed by the venue, not the sponsors, and splitting the cost of the room 50/50 between two sponsors accurately reflects each sponsor's contribution.

Likewise, some sponsors may contribute a set amount that equally benefits all attendees, for example, banquets that are attended by all attendees. In these cases, each sponsor should take the amount it contributed and divide that amount by the total number of attendees at the banquet, but it may exclude from the value received amounts expended on the banquet that are not used or enjoyed by the public official such as event invitation printing, security, equipment rental, and decorations. These expenses are typically fixed costs of the event and are not increased because of the public official's attendance. Conversely, expenses for meals, food, beverages, lodging, and transportation provided to the public official are included. Unlike the fixed costs, such hospitality reflects the value of expenditures on a public official covered by Section 19(a)(1). Some attendees will be public officials and some will not, but this method will accurately reflect the amount expended per person, including public officials and employees and members of their respective households. If the value that is expended on a public official, employee, and member of his or her household exceeds \$250.00 in a 24-hour period, then the amount and the identity of those public officials, employees, and members of their households must be disclosed and identified under Ala. Code § 36-25-19.

We note that some banquets and events are primarily fundraisers for charities. Often, a sponsor will receive a set number of event tickets in exchange for their sponsorship which they may in turn give to public officials or employees. In those situations, when the cost of an event ticket or sponsorship includes an amount that is a donation for the charity, then much of that donated amount is not considered to have been expended on a public official attendee (e.g., event invitation printing, security, equipment rental, decorations and a donation for the charity itself). Even in this context, however, if the food, beverages, or other hospitality provided to the public official, employee or member of his or her household—that is, something used or enjoyed by them--exceeds \$250.00 in a 24-hour period, then the amount and the identity of those public officials, employees, and members of their households must be disclosed and identified under Ala. Code § 36-25-19.

If a sponsor's contribution benefits less than all attendees (for example, registration fees for public officials), then the same method should be used to identify the value of their sponsorship to each beneficiary. If the sponsorship covers registration fees, then the amount of the registration fee can be divided over the number of days of the conference to arrive at a daily value. Conversely, when an association or other organization hosts an event, a member of that association/organization need not consider the amounts it pays for general dues or membership fees as being provided by the member to attendees. Of course, if that event exceeds \$250 as explained above, then the association/organization would report the expenditure in its quarterly report.

Using these methods, if the combined value of what is provided by a principal or lobbyist to a public official, employee or member of their household exceeds \$250 in a 24-hour period, then Section 36-25-19(a)(1) requires any principal or lobbyist who paid for it, including expenses paid from BCA operating funds, to report the amount spent and identify the public official, public employee, and member of their household who benefitted.

Moving forward, if there are multiple sponsors for an event for which precertification is requested, then the request for pre-certification must specify who all of the sponsors are, what they are paying for, if they intend to aggregate and if so, what expenses they intend to aggregate and a list of invitees. If sponsorships are not included in the request, then the Commission will presume that the requestor is the sole sponsor. Requestors may update their disclosures with the Commission prior to the quarterly filing deadlines for principals and lobbyists. If there are further questions regarding funding scenarios not addressed herein, then BCA should follow up with the Commission on a case-by-case basis.

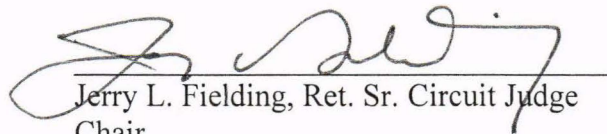
CONCLUSION

Ala. Code § 36-25-19(a) requires the accurate reporting of cumulative spending on pre-certified events, or those which otherwise fall within the exceptions to the definition of “thing of value” which during a 24-hour period exceeds \$250.00. For events in which there are multiple sponsors contributing varying amounts, Section 19 requires each payor to separately assess the value of their contribution per participant and accurately report if necessary.

If there are multiple sponsors for an event for which precertification is sought, then the request for precertification must specify who the sponsors are, if they intend to aggregate and if so, what expenses they intend to aggregate and a list of invitees. If sponsorships are not included in the request, then the Commission will presume that the requestor is the sole sponsor.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on February 7, 2018.


Jerry L. Fielding, Ret. Sr. Circuit Judge
Chair
Alabama Ethics Commission