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February 6, 2019

**ADVISORY OPINION NO. 2019-05**

Ms. April Danielson  
Wallace, Jordan, Ratliff, & Brandt, LLC  
800 Shades Creek Parkway, Suite 400  
Birmingham, Alabama 35209

**Use of Office for Personal  
Gain/Fundraising Through Social Media**

A public employee or public official and their family members may fundraise for the costs of medical treatment for their son provided there is no mention of their public position in the solicitation and they include with the solicitation a disclaimer that they are not soliciting any donations from (1) anyone seeking official action by the agency for which the public official or public employee serves or works, (2) anyone or any business that does business with the agency that the employee or official works for or serves (3) any principals, lobbyists, or subordinates of lobbyists, and (4) any person or business the public official or public employee directly inspects, regulates, or supervises in their official capacity.

No public official may accept anything with the intent to corruptly influence official action. No public official may solicit anything, other than a campaign contribution, from a lobbyist. See Ala. Code §36-25-23(c). The public official of public employee is required to make reasonable inquiry into all donations made to determine

whether any of the prohibited businesses or persons have contributed. If a prohibited contribution is made, the public official or employee may not intentionally retain that contribution. Public officials may not use public resources (equipment, facilities, materials, human labor or other public property under their discretion or control) in furtherance of their fundraising efforts.

Dear Ms. Danielson:

The Alabama Ethics Commission is in receipt of your request for a formal Advisory Opinion of this Commission on behalf of Casey Middlebrooks and this opinion is issued pursuant to that request.

#### **FACTS**

The facts as have been presented to the Commission are summarized as follows: "This firm represents the City of Hoover, Alabama. We have been requested to obtain a preliminary opinion from you concerning a situation in which City Councilman Casey Middlebrooks would like to ensure that no ethics violation would be present.

The City of Hoover is a Class 8 municipality consisting of a seven (7) member Council. Councilman Casey Middlebrooks was elected as a City Councilman of the City of Hoover in August 2016. Councilman Middlebrooks' son, William, was diagnosed with Cerebral Palsy (CP) at an early age and is confined to a wheelchair. Councilman Middlebrooks and his wife have investigated a stem cell treatment in Better Being Hospital in Bangkok, Thailand and would like for William to participate in this treatment program in June 2019. The treatment requires an extended stay of 25 days in Bangkok. It is estimated that treatment costs and travel costs will be approximately \$50,000.00. Councilman Middlebrooks and his wife would like to establish a GoFundMe page ("Page") to fundraise for the costs of William's treatment. Councilman Middlebrooks would like to ensure that there are no ethics issues present if he utilizes a GoFundMe page to raise the funds necessary for William's treatment. Councilman Middlebrooks will not make direct solicitations from persons related to the GoFundMe Page, but may publicize the fundraising effort through his personal Facebook account and/or other social media forums. Furthermore, he will not solicit a thing of value from a subordinate or person or business with whom he directly inspects, regulates or supervises in his official capacity and will not use the Page as an opportunity to corruptly influence official action."

### **QUESTIONS PRESENTED**

May City Councilman Casey Middlebrooks and his wife establish a GoFundMe Page to fundraise for the costs of medical treatment for their son (a dependent) who has Cerebral Palsy and publicize the same through his personal Facebook account and/or other social media forum(s)?

### **ANALYSIS**

Mr. Middlebrooks may personally fundraise for his son's medical treatment within the parameters set out in this opinion. Mr. Middlebrooks is a public official.<sup>1</sup> Public officials may not use their position to benefit themselves, a family member, or a business they are associated with<sup>2</sup>; a dependent son is a family member of a public official,<sup>3</sup> and no public official may use their official position to fundraise for themselves, a family member or business with which they are associated. Any fundraising that is done must be done without mention of the public official or public employee's official position. Public officials may not use public resources (equipment, facilities, materials, human labor or other public property under his discretion or control) in furtherance of their fundraising efforts.<sup>4</sup>

Public officials are prohibited from soliciting a thing of value, which would include the targeted requests for donations as described in this opinion, from a subordinate or person or any business whom he or she directly inspects, regulates, or supervises in his or her official capacity,<sup>5</sup> a principal, lobbyist, or subordinate of a lobbyist,<sup>6</sup> or any business that is regulated by the city council, or which are seeking official action by the City of Hoover. See AO 2017-01 (Tim Gothard).<sup>7</sup> No public official may accept anything with the intent to corruptly influence official action.<sup>8</sup> No public official may solicit anything, other than a campaign contribution, from a lobbyist. See Ala. Code §36-25-23(c). These are strict prohibitions and the public official or public employee is required to make reasonable inquiry into all donations made to determine whether any of the prohibited businesses or persons have contributed. If a prohibited contribution is made, the public official or employee may not intentionally retain that contribution. See Advisory Opinion 2015-14. Any fundraising done by a public official must avoid soliciting donations from any business or person as described above.

It is necessary to balance the private interests of public officials and public employees as required by our Act, but "[i]t is also essential to the proper operation of government that those best qualified be encouraged to serve in government. Accordingly, legal safeguards against

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<sup>1</sup> See Ala. Code §36-25-1(27)

<sup>2</sup> See Ala. Code §36-25-5(a)

<sup>3</sup> See Ala. Code §36-25-1(15)

<sup>4</sup> See Ala. Code §36-25-5(c)

<sup>5</sup> See Ala. Code §36-25-5(e)

<sup>6</sup> See Ala. Code §36-25-5.1

<sup>7</sup> See Ala. Code §36-25-12

<sup>8</sup> See Ala. Code §36-25-7

conflicts of interest shall be so designed as not to unnecessarily or unreasonably impede the service of those men and women who are elected or appointed to do so.” See Ala. Code § 36-25-2(b). Should public officials and public employees be in a position such as the Requestor, they should not be strictly prohibited from fundraising provided that reasonable safeguards are put in place. Moreover, in any fundraising campaign of this nature, it is necessary for a public employee or public official and their family members to include with the solicitation a disclaimer that they are not soliciting any donations from (1) anyone seeking official action by the agency for which the public official or public employee serves or works, (2) anyone or any business that does business with the agency that the employee or official works for or serves (3) any principals, lobbyists, or subordinates of lobbyists, and (4) any person or business the public official or public employee directly inspects, regulates, or supervises in their official capacity.

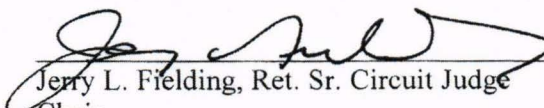
### **CONCLUSION**

A public employee or public official and their family members may fundraise for the costs of medical treatment for their son provided there is no mention of their public position in the solicitation and they include with the solicitation a disclaimer that they are not soliciting any donations from (1) anyone seeking official action by the agency for which the public official or public employee serves or works, (2) anyone or any business that does business with the agency that the employee or official works for or serves (3) any principals, lobbyists, or subordinates of lobbyists, and (4) any person or business the public official or public employee directly inspects, regulates, or supervises in their official capacity.

No public official may accept anything with the intent to corruptly influence official action.<sup>9</sup> No public official may solicit anything, other than a campaign contribution, from a lobbyist. See Ala. Code §36-25-23(c). The public official or public employee is required to make reasonable inquiry into all donations made to determine whether any of the prohibited businesses or persons have contributed. If a prohibited contribution is made, the public official or employee may not intentionally retain that contribution. Public officials may not use public resources (equipment, facilities, materials, human labor or other public property under their discretion or control) in furtherance of their fundraising efforts.

### **AUTHORITY**

By 5-0 vote of the Alabama Ethics Commission on February 6, 2019.

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

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<sup>9</sup> See Ala. Code §36-25-7