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September 5, 2001

ADVISORY OPINION NO. 2001-44

Ms. Martha S. Barber
Area I Senior Executive Director
Birmingham City Schools
P.O. Box 10007
Birmingham, Alabama 35202

Personal Gain/Principal Employed By Birmingham Board Of Education Receiving Free Trip As Part Of Promotional Program.

A principal employed by the Birmingham Board of Education may accept a free trip to Cancun, Mexico, won as part of a promotion to increase the number of businesses participating in the Birmingham City Schools' Partners in Education program, when the promotional program was made available to all principals and was sanctioned by the Birmingham City School System and the Birmingham School Board.

Dear Mrs. Barber:

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.

QUESTION PRESENTED

May a principal, employed by the Birmingham Board of Education, who participates in a promotional program to increase the number of businesses participating in the Birmingham City Schools' Partners in Education program, accept a free trip to Cancun, Mexico, won as a result of her participation in the program?

FACTS AND ANALYSIS

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

Martha S. Barber is Senior Executive Director of Area I of the Birmingham City School System. She is also a principal within the school system.

As Senior Executive Director of Area I, she was awarded a trip to Cancun, Mexico, due to the efforts of the principals in her area who had the best participation in acquiring new Partners in Education. This contest was announced at the beginning of the school year, and the only school board employees involved in the program were principals. No teachers or other school board employees were involved.

The promotion and recruitment subcommittee made the determination as to who would be eligible to receive the trip. This subcommittee is a sub-group of the Partners in Education Advisory Committee, which is comprised of representatives from all segments of the community, including government, business and education.

The program was made available to all principals and was sanctioned by both the school system and the school board.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(23) defines a public employee as:

"(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

Section 36-25-1(8) defines a conflict of interest as:

"(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs."

Section 36-25-5(a) states:

"(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain."

The Ethics Law expressly prohibits public officials and public employees from using their office in a manner that would provide personal gain. In the facts before the Commission, it appears that this opportunity was available to all principals as part of a program to increase participation in the Birmingham City Schools' Partners in Education program. The program was also sanctioned by the school system and school board.

Based on the facts as provided and the above law, a principal employed by the Birmingham Board of Education may accept a free trip to Cancun, Mexico, won as part of a promotion to increase the number of businesses participating in the Birmingham City Schools' Partners in Education program, when the promotional program was made available to all principals and was sanctioned by the Birmingham City School System and the Birmingham School Board.

CONCLUSION


A principal employed by the Birmingham Board of Education may accept a free trip to Cancun, Mexico, won as part of a promotion to increase the number of businesses participating

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in the Birmingham City Schools' Partners in Education program, when the promotional program was made available to all principals and was sanctioned by the Birmingham City School System and the Birmingham School Board.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on September 5, 2001.



Lewis G. Odom, Jr., Esq.
Chair
Alabama Ethics Commission