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November 7, 2001

ADVISORY OPINION NO. 2001-49

OPINION MADE MOOT BY AG OPINION NO. 2002-062
(FEDERAL LAW IS PREEMPTIVE)

The Honorable Michael D. Rogers
Member, Alabama House of Representatives
District No. 36
Alabama State House
Montgomery, Alabama 36130

Solicitation Of Campaign Contributions/
Member Of Alabama House Of
Representatives Running For Seat In United
States House Of Representatives, Soliciting
Campaign Contributions From Individuals,
Including Lobbyists, While The Alabama
Legislature Is In Special Session.

For purposes of the Alabama Ethics law, a
campaign contribution is a contribution
made to a candidate or a principal campaign
committee for the purposes of directly
influencing the outcome of a state or local
election.

A candidate for federal office is not a
candidate as defined by the Alabama Ethics
law or the Fair Campaign Practices Act, and
a campaign contribution to a federal
campaign is not a campaign contribution for
purposes of the Alabama Ethics law.

A member of the Alabama Legislature, who
is an openly declared and formally registered
candidate for federal office, may not solicit
contributions to his or her federal campaign

from a lobbyist, as a lobbyist may not be solicited for any thing, whether or not the thing solicited is a thing of value for any purpose other than a campaign contribution, regardless of whether the Legislature is in session or not.

The Alabama Ethics law does not prohibit a member of the Alabama Legislature, who is an openly declared and formally registered candidate for federal office, from soliciting and/or receiving contributions to his or her federal campaign from individuals or entities other than lobbyists while the Legislature is in session.

Dear Representative Rogers:

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 member of the Alabama House of Representatives, who is an openly declared and formally registered candidate for federal office, solicit and/or accept contributions to his federal campaign from individuals, including lobbyists registered with the state of Alabama, during the period of time the Alabama Legislature is convened into a special session?

FACTS AND ANALYSIS

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

Mike Rogers is a member of the Alabama House of Representatives for District No. 36. He has formally registered with the Federal Elections Commission as a candidate for the Republican nomination to Alabama's 3rd District seat in the United States Congress. He made this filing in July of this year and, since that time, has been aggressively and openly campaigning for that office. He states that a large part of this effort is fund-raising.

Given the fact that the Governor has called three special sessions, and he expects another special session to be called, this question has been posed.

The Alabama Ethics Law, Section 36-25-1(24) defines a public official as:

“(24) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2.”

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.”

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 36-25-23(b) states:

“(b) 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.”

Section 36-25-1(3) defines a candidate as:

“(3) CANDIDATE. This term as used in this chapter shall have the same meaning ascribed to it in Section 17-22A-2.”

Section 17-22A-2, commonly referred to as the Fair Campaign Practices Act, defines a candidate as:

“1) Candidate. An individual who has done any of the following:

- A) Taken the action necessary under the laws of the state to qualify himself or herself for nomination or for election to any state office or local office . . .”

The Fair Campaign Practices Act defines a state office as:

“All offices under the Constitution and laws of the state filled by election of the registered voters of the state or of any circuit or district and shall include legislative offices.”

Likewise, a local office under the Fair Campaign Practices Act is defined as:

“Any office under the Constitution and laws of the state except circuit, district or legislative offices filled by election of the registered voters of a single county or municipality or by the voters of a division contained within a county or municipality.”

The issue before the Commission is whether or not a campaign contribution solicited or accepted on the part of a candidate for federal office falls under the Alabama Ethics law.

On October 4, 2001, the Office of Attorney General rendered an Advisory Opinion for Representative Rogers regarding the same question. In that opinion, the Attorney General stated:

“This office has previously held that federal offices are not offices under the Constitution and laws of the state. Opinion to the Honorable Jim Bennett, Secretary of State, dated January 6, 2000, AG No. 2000-062 at 3.”

This opinion went on to state that:

“A candidate for a federal office is not considered a candidate for purposes of the Alabama FCPA. Accordingly, the provisions of the FCPA, in particular Section

17-22-7(b)(2) of the Code of Alabama, are not applicable to a candidate for a federal office. The fact that the candidate is currently a member of the Alabama Legislature does not subject the candidate to the provisions of the FCPA.”

In Advisory Opinion No. 99-39, rendered on December 1, 1999, the Ethics Commission stated that:

“A campaign contribution does directly relate to an election or candidacy for office.”

That opinion went on to state that:

“For purposes of the Alabama Ethics law, a campaign contribution is a contribution made to a candidate or a principal campaign committee for the purposes of directly influencing the outcome of an election.”

An election in this case, being an election for a state or local office where the candidate is subject to both the Ethics law and the Fair Campaign Practices Act.

As a campaign contribution, as defined by the Alabama Ethics law relates directly to a state or local election, a campaign contribution for a federal campaign, does not fall within this definition; and therefore, is not considered to be a campaign contribution for purpose of the Alabama Ethics law.

The Alabama Ethics law states that a lobbyist may not be solicited for any thing, regardless of whether or not the thing solicited is a thing of value for any purposes other than a campaign contribution. As a campaign contribution to a federal election does not fall within the definition of a campaign contribution for purposes of the Alabama Ethics law, a lobbyist may not be solicited for a campaign contribution to a candidate’s run for federal office, regardless of whether or not the Legislature is in session.

Likewise, as a contribution made to a federal run for office is not a campaign contribution for purposes of the Alabama Ethics law. A candidate may solicit other individuals or entities, other than lobbyists, for contributions to his or her run for federal office, regardless of whether or not the Legislature is in session.

Based on these facts and applicable state law, a campaign contribution to a candidate for federal office is not considered a campaign contribution as defined by the Alabama Ethics law, as the Ethics law’s definition relates solely to state and local offices.

CONCLUSION

For purposes of the Alabama Ethics law, a campaign contribution is a contribution made to a candidate or a principal campaign committee for the purposes of directly influencing the outcome of a state or local election.

A candidate for federal office is not a candidate as defined by the Alabama Ethics law or the Fair Campaign Practices Act, and a campaign contribution to a federal campaign is not a campaign contribution for purposes of the Alabama Ethics law.

A member of the Alabama Legislature, who is an openly declared and formally registered candidate for federal office, may not solicit contributions to his or her federal campaign from a lobbyist, as a lobbyist may not be solicited for any thing, whether or not the thing solicited is a thing of value for any purpose other than a campaign contribution, regardless of whether the Legislature is in session or not.

The Alabama Ethics law does not prohibit a member of the Alabama Legislature, who is an openly declared and formally registered candidate for federal office, from soliciting and/or receiving contributions to his or her federal campaign from individuals or entities other than lobbyists while the Legislature is in session.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on November 7, 2001.



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