



COMMISSIONERS

Russell Jackson Drake, Esq., Chairman
J. Harold Sorrells, Vice-Chairman
Raymond L. Bell, Jr., Esq.
Linda L. Green
Nancy Edwards Eldridge

STATE OF ALABAMA
ETHICS COMMISSION

MAILING ADDRESS

P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS

RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104



James L. Sumner, Jr.
Director

TELEPHONE (334) 242-2997
FAX (334) 242-0248
WEB SITE www.ethics.alalinc.net

September 4, 2002

ADVISORY OPINION NO. 2002-43

The Honorable Lucy Baxley
State Treasurer
State of Alabama
Department of Treasury
P.O. Box 302510
Montgomery, Alabama 36130-2510

Conflict Of Interests/State Treasurer, Who Is Candidate For Office Of Lieutenant Governor, Using Image And/Or Voice In Promotional Campaign For Alabama Higher Education 529 Fund.

The State Treasurer, who is a candidate for the Office of Lieutenant Governor, may allow her image and/or voice to appear in a newspaper and radio campaign to promote the Alabama Higher Education Trust Fund, as part of her duties as State Treasurer and Chairman of the Board of Directors of the 529 Fund is to manage, advertise and promote the Fund; provided however, that she not allow the promotional spots to be used as a campaign platform.

Dear Ms. Baxley:

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 the State Treasurer, who is a candidate for the Office of Lieutenant Governor in the upcoming November election, allow her image and/or voice to appear in promotional materials promoting the Alabama Higher Education 529 Fund, as part of her responsibilities as State Treasurer and Chairman of the Board of Directors of the 529 Fund?

FACTS AND ANALYSIS

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

The Honorable Lucy Baxley currently serves as State Treasurer for the State of Alabama. She is a candidate for Lieutenant Governor in the upcoming November election.

In 2001, the Alabama Legislature passed Act No. 2001-427, which created the Wallace - Folsom College Savings Investment Plan. The legislation enacted requires that the program be administered and overseen by the Office of State Treasurer.

The Alabama Higher Education 529 Fund, which is an investment plan offered to families to assist with higher education expenses, is managed by VanKampen Investments. VanKampen Investments has developed a media plan to promote awareness of the program and to encourage residents of Alabama to invest in the plan. The media plan involves both newspaper and radio advertising, which will be paid for solely by VanKampen Investments.

There have been several marketing campaigns in the past, including a direct mail sent to some 50,000 Alabama households in July of 2002. The letters were signed by Lucy Baxley, Alabama State Treasurer and served no other function than to promote the Alabama Higher Education 529 Fund.

Recently, VanKampen Investments has approached Ms. Baxley about a media campaign offering radio spots, etc. to promote the program. VanKampen Investments would like Ms. Baxley, as State Treasurer, to allow her image to appear in the promotions, as well as her voice.

Due to the fact that Ms. Baxley is a candidate for Lieutenant Governor, she asks the above question.

The Alabama Ethics Law, Code of Alabama, 1975, 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 36-25-1(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.”

Section 36-25-5(c) states:

“(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy.”

The Alabama Higher Education 529 Fund, as enacted into law, requires that the plan be managed and overseen by the State Treasurer. But for the fact Ms. Baxley is a candidate for Lieutenant Governor in the upcoming election, the question would not have been asked, in that, it is a normal part of her responsibilities as State Treasurer to promote the program.

Based on this fact, it would not be a conflict of interest for Ms. Baxley to allow her image and her voice to appear in promotional campaigns relating to the Alabama Higher Education 529 Fund, as long as the ad campaign, radio spots, etc. are not used as a campaign platform or vehicle to assist her in running for Lieutenant Governor.

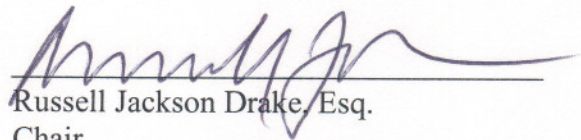
Based on the facts as provided and the above law, the State Treasurer, who is a candidate for the Office of Lieutenant Governor, may allow her image and/or voice to appear in a newspaper and radio campaign to promote the Alabama Higher Education Trust Fund, as part of her duties as State Treasurer and Chairman of the Board of Directors of the 529 Fund is to manage, advertise and promote the Fund; provided however, that she not allow the promotional spots to be used as a campaign platform.

CONCLUSION

The State Treasurer, who is a candidate for the Office of Lieutenant Governor, may allow her image and/or voice to appear in a newspaper and radio campaign to promote the Alabama Higher Education Trust Fund, as part of her duties as State Treasurer and Chairman of the Board of Directors of the 529 Fund is to manage, advertise and promote the Fund; provided however, that she not allow the promotional spots to be used as a campaign platform.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on September 4, 2002.



Russell Jackson Drake, Esq.
Chair
Alabama Ethics Commission