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June 4, 2003

ADVISORY OPINION NO. 2003-31

Mr. Blake A. Madison
Attorney at Law
Tanner & Guin, L.L.C.
Capitol Park Center
2711 University Boulevard
Tuscaloosa, Alabama 35403-3206

Lobbyist Registration/Attorney Providing
Input And Having Discussions Regarding
Proposed Business License Tax Ordinance

An attorney, volunteering his time to review and comment on a draft business license tax ordinance proposed by the City of Tuscaloosa, is not required to register as a lobbyist with the Alabama Ethics Commission, as the activities undertaken do not rise to the level of promoting, opposing, influencing or attempting to influence the introduction, defeat or enactment of legislation or regulation.

Dear Mr. Madison:

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

Is an attorney, who is a voluntary member of the Tax Committee of the Chamber of Commerce of West Alabama, who is volunteering his time to review and comment on a draft business tax license ordinance proposed by the City of Tuscaloosa, required to register as a lobbyist?

FACTS AND ANALYSIS

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

Blake A. Madison is an attorney with the firm of Tanner & Guin in Tuscaloosa, Alabama. He is a voluntary member of the Tax Committee of the Chamber of Commerce of West Alabama, and has been chosen as one of the Committee's spokespersons to meet with Tuscaloosa City officials concerning a proposed business tax license ordinance.

Mr. Madison will be volunteering his time to review and comment on a draft business tax license ordinance proposed by the City of Tuscaloosa, and is providing input and having discussions with City of Tuscaloosa employees and City Council members concerning whether or not the proposed ordinance is good or bad tax and economic policy for the citizens of Tuscaloosa, and will be suggesting changes to the proposed ordinance to clarify its provisions and to make it fair to all parties affected by the ordinance.

Mr. Madison's comments and suggestions are in no way related to any one client or group of clients, but are more in line with that of a citizen speaking on proposed legislation.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(18) defines a lobbyist as:

“(18) LOBBYIST.

a. The term lobbyist includes any of the following:

1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.
2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.

3. A person who expends in excess of one hundred dollars (\$100) for a thing of value, not including funds expended for travel, subsistence expenses, and literature, buttons, stickers, publications, or other acts of free speech, during a calendar year to lobby.
 4. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.
 5. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.
- b. The term lobbyist does not include any of the following:
1. A member of a legislative body on a matter which involves that person's official duties.
 2. A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.
 3. Reporters and editors while pursuing normal reportorial and editorial duties.
 4. Any citizen not expending funds as set out above in paragraph a.3. or not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a particular issue or on particular legislation, or for the purpose of influencing legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.
 5. A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.
 6. A person whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who

may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess.”

For purposes of the Alabama Ethics Law, lobbying is the practice of promoting, opposing or in any manner attempting to influence the introduction, defeat or enactment of legislation before any legislative body, whether it is the Legislature, a city council, etc.

Providing public testimony before a legislative body or regulatory body is not considered lobbying, nor is an attorney, who is merely advising as to the impact of legislation or ordinance, a lobbyist.

In addition, individuals have a First Amendment right to express their opinions regarding proposed legislation.

From the information provided, the activities proposed to be undertaken by Mr. Madison do not rise to the level of lobbying, but are more in line with an individual exercising his or her right to comment on pending legislation. In addition, it appears that Mr. Madison will be providing Pro Bono professional services in advising the City, as well as City employees, on the ramifications of the proposed ordinance.

Based on the facts as provided and the above law, an attorney, volunteering his time to review and comment on a draft business license tax ordinance proposed by the City of Tuscaloosa, is not required to register as a lobbyist with the Alabama Ethics Commission, as the activities undertaken do not rise to the level of promoting, opposing, influencing or attempting to influence the introduction, defeat or enactment of legislation or regulation.

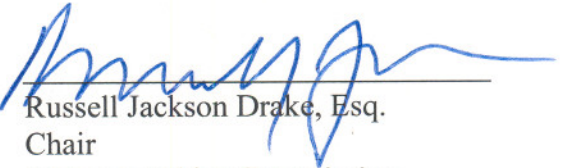
CONCLUSION

An attorney, volunteering his time to review and comment on a draft business license tax ordinance proposed by the City of Tuscaloosa, is not required to register as a lobbyist with the Alabama Ethics Commission, as the activities undertaken do not rise to the level of promoting, opposing, influencing or attempting to influence the introduction, defeat or enactment of legislation or regulation.

Mr. Blake A. Madison
Advisory Opinion No. 2003-31
Page five

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on June 4, 2003.



Russell Jackson Drake, Esq.
Chair
Alabama Ethics Commission