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October 3, 2007

ADVISORY OPINION NO. 2007-16

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Alabama Crime Victims Compensation Commission
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Solicitation Of A Thing Of Value/
Employees Of Alabama Crime Victims
Compensation Commission (ACVCC)
Soliciting "Commitments To Purchase" An
ACVCC Specialty License Plate

The Alabama Crime Victims Compensation Commission (ACVCC) may allow its employees to solicit "commitments to purchase" automobile specialty license plates during office hours for the benefit of the Alabama Crime Victims Compensation Fund; provided, that solicitations are not made to clients of the Alabama Crime Victims Compensation Fund; that a general/generic letter is mailed equally to all vendors and community organizations; that vendors conducting business with the Alabama Crime Victims Compensation Commission are not singled-out for donations, nor offered business in return for donations; that lobbyists are not solicited to participate; and, in addition, where there is no personal gain on the part of any employee of the Alabama Crime Victims Compensation Commission.

Any general/generic letter sent should include a disclaimer stating that lobbyists who receive this letter disregard it as it was sent to them inadvertently and should be ignored, as lobbyists may not be solicited for anything other than a campaign contribution.

These solicitations may be conducted during normal business hours, only to the extent that the Commission's normal operations are not hindered in any manner.

The Alabama Crime Victims Compensation Fund may accept "commitments to purchase" automobile specialty license plates from vendors and clients of the ACVCC; provided, that the clients do so voluntarily and are not solicited to participate.

Dear Dr. Jones:

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 Alabama Crime Victims Compensation Commission allow its employees to solicit "commitments to purchase" automobile specialty license plates during office hours to benefit the Alabama Crime Victims Compensation Fund?

FACTS AND ANALYSIS

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

The Alabama Crime Victims Compensation Commission (Commission) was created in 1984 to assist victims of violent crime with the expenses that they incur as a result of victimization. The Commission does not receive any general fund monies. It is funded by fines,

fees and restitution collected for various traffic citations and misdemeanor and felony offenses. The Commission also receives federal grant money. These funds are placed in the Alabama Crime Victims Compensation Fund, which was created by Section 15-23-16 of the Code of Alabama, which provides:

Alabama Crime Victims Compensation Fund; created; purposes; composition; administered or managed by commission.

- (a) There is hereby established a special fund to be known as the Alabama Crime Victims Compensation Fund.
- (b) The fund shall be placed under the management or administration of the Alabama Crime Victims Compensation Commission for purposes of providing compensation or other benefits to crime victims and for purposes of implementing this article.
- (c) The fund shall consist of all moneys collected or received by the Alabama Crime Victims Compensation Commission from any source.
- (d) The commission shall have control of the funds not inconsistent with this article and with the laws of Alabama.
- (e) All moneys of the commission shall be covered into the State Treasury or deposited in a special trust account and may be withdrawn therefrom by vouchers or check signed by the chair of the commission pursuant to authorization given by the commissioner. All investments of moneys in the fund shall be either deposited with the State Treasurer for safekeeping upon receipt of the State Treasurer therefor or deposited with the bank in a custodial account. The commission shall have authority to expend moneys in the fund in accordance with this article and to invest any moneys so received pending other needs therefor in any investments which are legal investments for insurance companies under the laws of the state.
- (f) No member of the commission shall have any interest in the investments or receive any commission with respect thereto.
- (g) It shall be the duty of the commission to keep detailed permanent records of all expenditures and disbursements from the fund.
- (h) The commission is authorized to accept and use funds available to it from all sources, such as grants, appropriations, gifts, donations, and other sources for purposes of implementing this article.
- (i) The commission may not award any moneys for the six months immediately following passage of this article.
- (j) The commission may not award or promise to award more moneys than are available in the fund.
- (k) The commission shall not spend more than 25 percent of its funds for administrative costs.

ALA. CODE § 15-23-16 (1995)

In the past several years, the Commission has experienced a dramatic increase in compensation claim awards. This increase in compensation payments is steadily draining the fund. In order to address the dwindling fund and to create awareness of the agency, the Commission would like to develop its own automobile specialty license plate. In order to do this, an entity must receive one thousand "commitments to purchase." In order to raise the one thousand commitments necessary to commission the license plate, the Commission would have to solicit the "commitments to purchase." The efforts to procure the "commitments to purchase" would be conducted by Commission staff during office hours. The money collected would be used solely for compensating eligible victims of violent crime and none would be used for administrative costs.

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(31)(a) defines a thing of value as:

"(31) THING OF VALUE.

a. Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event offered only to public officials, unsecured loan, other than those loans made in the ordinary course of business, reward, promise of future employment, or honoraria."

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.”

Section 36-25-5(e) states:

“(e) No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity.”

Section 36-25-7(b) states:

“(b) No public official or public employee shall solicit or receive a thing of value for himself or herself or for a family member of the public employee or family member of the public official for the purpose of influencing official action.”

While the issue of solicitations by public officials and public employees has come up from time to time over the years, it has only been officially addressed by the Commission on a limited basis.

The most recent opinions were numbers 2004-19 and 2004-22, both rendered in the year 2004. Opinion 2004-19 held that:

“The University of South Alabama, by and through the Vice President for Financial Affairs, may solicit funds and donations to sponsor a golf tournament, with all proceeds helping to support the University of South Alabama Athletics Department; provided, that a general/generic letter is mailed equally to all vendors, community organizations and individuals; that vendors conducting business with the University of South Alabama are not singled-out for donations, nor offered business in return for donations; and, that there is no personal gain on the part of any employee of the University of South Alabama.”

Likewise, AO2004-22 held that:

“Employees of the Alabama Crime Victims Compensation Commission may solicit donations and prizes for the department’s Victims’ Fund Run through personal contact and letters when all funds will be retained by the Commission for distribution to victims of crime; provided, that vendors conducting business with the Alabama Crime Victims Compensation Commission are not singled-out for donations, nor offered business in return for donations; that there is no personal gain on the part of any employee of the Alabama Crime Victims Compensation Commission; and, that the solicitations are made in a general/generic way so that specific vendors do not feel coerced into contributing.”

As relates to this opinion, AO2004-22 further held that:

“Employees of the Alabama Crime Victims Compensation Commission may make the solicitations during normal business hours, only to the extent that the Commission’s normal operations are not hindered in any manner.”

Both of these opinions pointed out that lobbyists could not be solicited for anything.

On July 10, 1996, the Commission rendered Advisory Opinion No. 96-57, which held that:

“Members of the Alabama State Employees Association, Third Division Transportation Chapter may solicit a thing of value from a person or business with whom they do not directly inspect, regulate, or supervise in their official capacity when the solicitation is done for a non-profit organization, where there is no personal gain to the public employee, and no influencing of official action.”

“Members of the Alabama State Employees Association, Third Division Transportation Chapter may not solicit a thing of value from a vendor who does business with the Department of Transportation that they directly inspect, regulate, or supervise.”

The Ethics Law prohibits the solicitation of things of value from subordinates, vendors, licensees, etc., because to allow otherwise would put that person or entity being solicited in the uncomfortable position of being “covertly pressured” to respond to the solicitation.

In the facts before the Commission in 1996 and 1998, as well as today, the solicitations serve a purpose other than the benefit of a private individual or individuals.

In the current facts, the purpose of the solicitations is to better allow the ACVCC to serve victims of crime throughout the State of Alabama. Because of funding problems, outside sources of funding are necessary. However, the fact that the benefit accrues to the ACVCC, as well as its clients (therefore to the State of Alabama in general), it is still problematic for employees of the ACVCC to solicit clients, as it would put the clients in the position of feeling that they had to purchase a specialty tag in order to receive benefits provided by the ACVCC.

Therefore, while employees of the Alabama Crime Victims Compensation Commission may solicit "commitments to purchase" automobile specialty license plates during office hours for the benefit of the ACVCC, they may not solicit clients of the ACVCC, nor may they solicit lobbyists. In addition, they may not directly solicit vendors doing business with the ACVCC, but must address all vendors and/or community organizations generally or generically, so that these vendors/organizations do not feel pressured into participating.

Further, the Alabama Crime Victims Compensation Fund may accept "commitments to purchase" automobile specialty license plates from clients of the ACVCC; provided, that the clients do so voluntarily and are not solicited to participate.

CONCLUSION

The Alabama Crime Victims Compensation Commission (ACVCC) may allow its employees to solicit "commitments to purchase" automobile specialty license plates during office hours for the benefit of the Alabama Crime Victims Compensation Fund; provided, that solicitations are not made to clients of the Alabama Crime Victims Compensation Fund; that a general/generic letter is mailed equally to all vendors and community organizations; that vendors conducting business with the Alabama Crime Victims Compensation Commission are not singled-out for donations, nor offered business in return for donations; that lobbyists are not solicited to participate; and, in addition, where there is no personal gain on the part of any employee of the Alabama Crime Victims Compensation Commission.

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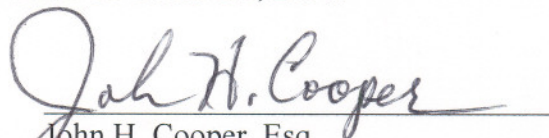
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AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on October 3, 2007.


John H. Cooper, Esq.
Chair
Alabama Ethics Commission