Mr. Mark A. Crosswhite, Esq.
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Dear Mr. Crosswhite:

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 Alabama Power Company provide tickets to a concert or other “things of value” to a public school teacher, who has been selected as “Teacher of the Year,” and must these awards be reported under the reporting requirements contained in the Alabama Ethics Law?
FACTS AND ANALYSIS

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

"In accordance with Alabama Code § 36-25-4(9), Alabama Power Company respectfully requests an Advisory Opinion from the Alabama Ethics Commission regarding the following:

A public schoolteacher is being honored as "Teacher of the Year" by a community. The local Alabama Power business office manager would like to provide the schoolteacher with tickets to a concert purchased by Alabama Power in recognition of this honor. The concert tickets would be provided to the schoolteacher because of her award and not as an effort by Alabama Power to influence her actions as a public schoolteacher. The cost of the tickets to be provided to the schoolteacher would exceed $250. Would the provisions of the tickets necessitate the filing of a report with the Commission by Alabama Power?

Alabama Power respectfully requests that the Ethics Commission provide guidance through an Advisory Opinion as described above."

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(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 36-25-1(31)(b) defines what the term, thing of value, excludes:

“b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

1. Campaign contribution.

2. Seasonal gifts of an insignificant economic value of less than one hundred dollars ($100) if the aggregate value of such gifts from any single donor is less than two hundred fifty dollars ($250) during any one calendar year.

3. Hospitality extended to a public official, public employee, and his or her respective household as a social occasion in the form of food and beverages where the provider is present, lodging in the continental United States and Alaska incidental to the social occasion, and tickets to social or sporting events if the hospitality does not extend beyond three consecutive days and is not continuous in nature and the aggregate value of such hospitality in excess of two hundred fifty dollars ($250) within a calendar day is reported to the commission by the provider provided that the reporting requirement contained in this section shall not apply where the expenditures are made to or on behalf of an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, and where the public official or public employee does not receive any direct financial benefit. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.

4. Reasonable transportation, food and beverages where the provider is present, and lodging expenses in the continental United States and Alaska which are provided in conjunction with an educational or informational purpose, together
with any hospitality associated therewith; provided, that such hospitality is less than 50 percent of the time spent at such event, and provided further that if the aggregate value of such transportation, lodging, food, beverages, and any hospitality provided to such public employee, public official, and his or her respective household is in excess of two hundred fifty dollars ($250) within a calendar day the total amount expended shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.

5. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence of a public official or public employee in connection with an economic development research or trade mission, or for attendance at a mission or meeting in which he or she is scheduled to meaningfully participate, or regarding matters related to his or her official duties, and for which attendance no reimbursement is made by the state; provided, that any hospitality in the form of entertainment, recreation, or sporting events shall constitute less than 25% of the time spent in connection with the event. If the aggregate value of any such hospitality extended to the public employee, public official, and his or her respective household is in excess of two hundred fifty dollars ($250) within a calendar day, the total amount expended for that day shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of such expenditures, the date or dates of the expenditure, and the type of expenditure.”

The Commission has long recognized that there are situations where public officials/public employees may be recognized for their outstanding service. In Advisory Opinion No. 99-51, rendered on November 3, 1999, the Commission held that:

“Personnel with the Gadsden Police Department may receive cash awards in recognition of their performance when the funds are provided by private donations to the City of Gadsden for disbursement to the recipients of the awards; provided, the program is governed by departmental policy.”

Likewise, on October 23, 1995, in Advisory Opinion No. 95-83, the Commission opined that:

“An automobile dealership may donate an automobile to be used by The Teacher of the Year at no cost to the teacher.”
In Advisory Opinion No. 95-83, it was understood that the local Board of Education would serve as the lessee and would, therefore, be in control of the use of the donated vehicle by the “Teacher of the Year”, i.e., a policy relating to the use of an automobile by the “Teacher of the Year” was effectively created.

In the facts before the Commission, it would not be improper or inappropriate under the Ethics Law for Alabama Power Company to award tickets to a concert or other items to an individual in recognition of his or her selection as “Teacher of the Year.” However, the school board should have a policy in place providing guidance and setting guidelines, in order to maintain control of the practice.

Based on the facts as provided and the above law, Alabama Power Company may award tickets to a concert or other items in recognition of the teacher being selected as “Teacher of the Year” without any reporting requirements under the Ethics Law being triggered; provided, the school system employing the teacher has a policy in place that recognizes and allows this practice.

CONCLUSION

Alabama Power Company may award tickets to a concert or other items in recognition of a teacher being selected as “Teacher of the Year” without any reporting requirements under the Ethics Law being triggered; provided, the school system employing the teacher has a policy in place that recognizes and allows this practice.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on December 5, 2007.