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April 2, 2008

ADVISORY OPINION NO. 2008-04

Roy D. Nichols, Jr., Ed. D.
Superintendent
Mobile County Public School System
P.O. Box 180069
Mobile, Alabama 36618

Solicitation Of A Thing Of Value/Mobile County Public Schools Hosting Meeting Of the Large City School Superintendents (LCSS) In January, 2009, And Having School System Employees Soliciting Vendors To Sponsor LCSS Conference Events

Employees of the Mobile County Public School System may solicit contributions for the Large City School Superintendents' conference; provided, that vendors conducting business with the school system are not singled-out for donations, nor offered business in return for donations; where the solicitations are made in a general/generic way, so that specific vendors do not feel coerced into contributing; when all funds will be retained for the purpose of the Large City School Superintendents' conference; and, where there is no personal gain accruing to employees of the school system.

In addition, employees of the Mobile County Public School System may not solicit lobbyists to contribute to the Large City School Superintendents' conference.

Dear Dr. Nichols:

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 employees of the Mobile County Public School System solicit vendors to sponsor Large City School Superintendents' (LCSS) conference events, when the Mobile County Public School System hosts the meeting of the Large City School Superintendents of the United States and Canada in January, 2009?

FACTS AND ANALYSIS

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

Roy D. Nichols, Jr. is a Superintendent of the Mobile County Public School System. The Mobile County Public School System would like to host a meeting of the Large City School Superintendents (LCSS) of the United States and Canada in January of 2009. Because host city employees are asked to solicit vendors to sponsor LCSS conference events, Dr. Nichols requests this opinion on whether it would be ethical under Alabama law for Mobile County employees to engage in such practices.

The LCSS conference rotates from member city to member city. The organizational activities that occur at each of these meetings are a combination of business meetings and social events for the superintendents, their spouses, and vendors.

The LCSS, through the host school system's staff, solicits event sponsorships for conference activities. Vendors sponsor tours, meals and entertainment for conference attendees, including conference participants, spouses and other vendors. At the sponsored event, the sponsor briefly addresses the attendees about his/her company's products and services.

The superintendents and their spouses pay their own transportation and lodging for the four-day conference. The sponsoring school system staff solicits sponsorships of the various conference events. The vendors submit checks for the events they sponsor to the appropriate school system employees, who in turn give the checks to the LCSS Executive Director. The Executive Director then deposits the vendors' checks into the LCSS checking account. LCSS pays the bills for the conference events. Should Mobile County Schools sponsor this event, neither the System nor any of its employees will profit from their involvement.

Because he is new to Alabama, Dr. Nichols wanted to make certain this activity would not be prohibited under the Alabama Ethics Law.

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 36-25-5(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 36-25-23(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.”

The Ethics Law prohibits public officials and public employees from soliciting a thing of value from subordinates, persons or businesses who are inspected, regulated or supervised by that public official/public employee. The Commission has extended this prohibition to the solicitation of vendors, the rationale being that vendors who want to maintain business with a public entity will feel coerced into contributing if they are directly solicited.

At the same time, however, there are certain occasions and certain events for which a generic form of solicitation is allowed.

On October 6, 2004, the Commission rendered Advisory Opinion No. 2004-22, which stated 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.”

“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.”

In addition, that opinion went on to state:

“Employees of the Alabama Crime Victims Compensation Commission, as public employees, may not solicit lobbyists to contribute to the Victims’ Fund Run.”

Based on the facts as presented to the Commission, it would not violate the Ethics Law for employees of the Mobile County Public School System to solicit vendors to sponsor LCSS events, when no personal benefit accrues to employees of the System.

However, the solicitations must be made in a general/generic way, so that no vendor feels coerced or obligated to contribute; and further, no lobbyists may be solicited.

Based on the facts as provided and the above law, employees of the Mobile County Public School System may solicit contributions for the Large City School Superintendents’ conference; provided, that vendors conducting business with the school system are not singled-out for donations, nor offered business in return for donations; where the solicitations are made in a general/generic way, so that specific vendors do not feel coerced into contributing; when all funds will be retained for the purpose of the Large City School Superintendents’ conference; and, where there is no personal gain accruing to employees of the school system.

In addition, employees of the Mobile County Public School System may not solicit lobbyists to contribute to the Large City School Superintendents’ conference.

CONCLUSION

Employees of the Mobile County Public School System may solicit contributions for the Large City School Superintendents’ conference; provided, that vendors conducting business with the school system are not singled-out for donations, nor offered business in return for donations; where the solicitations are made in a general/generic way, so that specific vendors do not feel

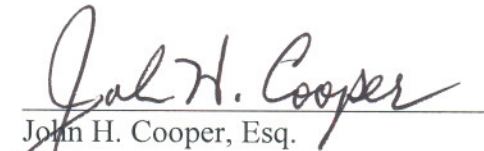
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AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on April 2, 2008.



John H. Cooper, Esq.
Chair
Alabama Ethics Commission