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August 6, 2008

ADVISORY OPINION NO. 2008-15

Mr. Gene Hallman, Jr.
Alabama Sports Foundation, Inc.
President
Bruno Event Team
Bruno Capitol Building
100 Grandview Place
Suite 110
Birmingham, Alabama 35243

Reporting Requirements/Hospitality Provisions Under The Ethics Law

Hospitality, where the expenditure is made to, or on behalf of, the Alabama Sports Foundation, Inc., a 501(c)(3) organization to which a federal income tax deduction is permitted under Section 170 of the Internal Revenue Code of 1986, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, does not have to be reported under the reporting requirements of Section 36-25-1(31)(b)(3); provided, that the public official or public employee does not receive any direct financial benefit, and the expenditure is legitimately made to, or on behalf of, the charitable organization.

In addition, while the hospitality provided under this Section is exempt from the reporting requirements of the Ethics Law, it may not last longer than three days and may not otherwise be continuous in nature.

Dear Mr. Hallman:

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

Does hospitality provided to public officials or public employees either by, or on behalf of, the Alabama Sports Foundation, Inc., a tax exempt charitable foundation, have to be reported under Section 36-25-1(31)(b)(3) of the Alabama Ethics Law?

FACTS AND ANALYSIS

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

The Alabama Sports Foundation (the "Foundation") is a tax-exempt charitable foundation organized under Alabama law and qualified under §501(c)(3) of the Internal Revenue Code of 1986, contributions to which are deductible under § 170(A)(1)(b) of the Internal Revenue Code. The primary purpose of the Foundation is to foster and support amateur athletic competition in accordance with § 501(c)(3). Included among the many events that the Foundation has sponsored in the State of Alabama during the past several years are U.S. Men's and Women's National Soccer matches, Olympic Marathon Trials, NCAA Men's Basketball Regionals, the Magic City Classic and the Southeastern Conference Baseball Tournament. They are seeking an Advisory Opinion from the Commission regarding the application of the reporting requirements under Section 36-25-1(31)(b)(3) of the Alabama Code to the participation by public employees and public officials in certain of the activities of the Southeastern Conference Baseball Tournament (the "SEC Baseball Tournament") as described below.

At the end of each college baseball season, the top eight teams in the Southeastern Conference during regular season play qualify to participate in the SEC Baseball Tournament to compete for the Southeastern Conference Tournament Championship. The winner of the SEC Baseball Tournament receives an automatic bid to the NCAA Baseball Championships. Since 1998, the SEC Baseball Tournament has been conducted at Regions Park (formerly the Hoover Met) in Hoover, Alabama by the Foundation under an agreement with the Southeastern Conference. The current agreement between the Foundation and the SEC extends through the year 2011. The Tournament takes place in eight separate sessions over a period of five consecutive days during which the eight teams play for the championship title. A ticket book for all eight sessions can be purchased for a price of $75.00 or tickets for individual sessions can be purchased for $12.00 per ticket. Over the past several years, the Tournament has averaged aggregate attendance of over 100,000 during the five days of the Tournament.

The Foundation operates a corporate hospitality suite at Regions Park during the Tournament with a capacity of approximately 400 persons from which the games can be viewed (the "Hospitality Suite"). The Foundation provides food and beverage for persons admitted to the Hospitality Suite. Admission passes to the Hospitality Suite can be purchased from the Foundation for $450 each by Foundation Supporters for their own personal use and for the purpose of entertaining their employees, customers and other guests during the game. The Hospitality Suite provides a format for the staff and representatives of the Foundation and for Foundation Supporters to entertain guests in a social setting during the Tournament games. Each admission pass purchased for $450 is for one admission to the Hospitality Suite for each of the eight sessions.

Admission privileges to the Hospitality Suite do not include game admission. Tickets for each session of the Tournament, which cost $12.00 each, are required for admission to the Regions Park for each Tournament session.

Each of the Hospitality Suite passes which are acquired by Foundation Supporters consists of a book of passes for the Hospitality Suite for all eight sessions of the Tournament. The individual passes for each session can be separated and used individually for admission. There are occasions when a Foundation Supporter that has acquired Hospitality Suite passes and game admission tickets for the Tournament may desire to offer Hospitality Suite passes, along with game tickets, to one or more individual Tournament sessions to a public employee or public official for use by that public employee or public official, along with guests that the public employee or public official may wish to invite, such as a spouse or date and children. There are also occasions when the Foundation itself may desire to offer Hospitality Suite passes, along with game admission tickets, to one or more individual Tournament sessions to a public employee or public official, for such use by the public employee or public official.

Alabama Code Section 36-25 generally imposes specific restrictions and prohibitions on the receipt by and offer to public officials and public employees of any "thing of value" as that term is defined in the Code. Section 36-25-1(31)(b)(3) provides an exception under permitted circumstances to the definition of a "thing of value" for hospitality provided to public officials and public employees. That section reads as follows:

> "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.**" (Emphasis added).

The amounts paid to the Foundation by Foundation Supporters who acquire Hospitality Suite passes are not necessarily based on the underlying cost of the benefits or the actual market value of the benefits but are significantly derived from the motivation and desire of the Foundation Supporters to support the Foundation, the Southeastern Conference and the universities participating in the Tournament. However, it is assumed that the actual price paid to the Foundation by Foundation Supporters for these privileges is their value for the purposes of Section 36-25-1(31)(b)(3).

Since each Hospitality Suite bears a cost of $450 to a Foundation Supporter and provides admission rights to each of the eight sessions of the Tournament, the per session value of admission to the Hospitality Suite would be approximately $57. Therefore, the total value of admission to the Hospitality Suite and a $12.00 game admission ticket for each session would be approximately $69 per person. There are a combination of circumstances where the aggregate value of game admission tickets and Hospitality Suite admission passes to individual Tournament sessions given to a public employee or public official could exceed the $250 threshold for reporting to the Commission described in Alabama Code Section 36-25-1(31)(b)(3). For instance, if tickets and passes to a Tournament session are provided to a public employee or public official for two individual Tournament sessions that occur on the same day, the aggregate value of those four tickets and four passes would be approximately $276.

As set forth above, Alabama Code § 36-25-1(31)(b)(3) provides that the reporting requirement in that section does not apply when permitted hospitality is provided to a public official/employee where the expenditures are made to or on behalf of a Section 501(c)(3) organization, so long as the public official/employee does not receive "any direct financial benefit." In the above-described circumstances, it would appear that (1) the Foundation and the Foundation Supporters would be providing "hospitality," as that term is defined in § 36-25-1

(31)(b)(3), to public officials and to public employees where the provider is present; (2) public officials/employees who attend would receive only permitted hospitality (admission to social and sporting events along with food and beverages) and would not receive direct financial benefit; and (3) the expenditures are being made to or on behalf of the Foundation which is a 501(c)(3) organization, contributions to which are deductible under Internal Revenue Code § 170(c)(1)(A). Accordingly, the Foundation requests from the Commission an Advisory Opinion clarifying whether the Foundation or the Foundation Supporters would have a reporting obligation under Section 36-25-1(31)(b)(3) when the Foundation or a Foundation Supporter provides a public official/employee with the above-described benefits that have a value of more than $250.

In view of the fact that Section 36-25-1(31)(b)(3) stipulates it applies only where the hospitality involved "does not extend beyond three consecutive days," it is understood that tickets and passes could not be offered to public employees or public officials, under the circumstances described in this letter, for individual sessions of the Tournament exceed three of the five days.

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(12) defines a family member of the public official as:

> "(12) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official."

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(11) defines a family member of a public employee as:

"(11) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the public employee."

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 36-25-1(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."

6. Promotional items commonly distributed to the general public and food or beverages of a nominal value."

In December of 2007, the Commission rendered Advisory Opinion No. 2007-22, which held:

"Hospitality, where the expenditure is made to, or on behalf of, the Birmingham Zoo or any other organization to which a federal income tax deduction is permitted under Section 170 of the Internal Revenue Code of 1986, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, does not have to be reported under the reporting requirements of Section 36-25-1(31)(b)(3); provided, that the public official or public employee does not receive any direct financial benefit, and the expenditure is legitimately made to, or on behalf of, the charitable organization."

The scenario before the Commission is different than Advisory Opinion No. 2007-22, in that in this scenario, while all benefits are ultimately provided by or to the Alabama Sports Foundation, the Sports Foundation will sell packages to Foundation supporters who will then provide the ticket packages to businesses and individuals, including some public officials and public employees. Section 36-25-1(31)(b)(3) clearly provides that the expenditures may be made to, or on behalf of, the charitable organization. That is clearly the situation before the Commission.

Based on this section and the fact that the Alabama Sports Foundation is a non-profit organization, these expenditures do not have to be reported under the above section.

As Mr. Hallman correctly points out in his request, even though the hospitality is not required to be reported, it still may not last longer than three days, nor be considered of a continuous nature.

Based on the facts as provided and the above law, hospitality, where the expenditure is made to, or on behalf of, the Alabama Sports Foundation, Inc., a 501(c)(3) organization to which a federal income tax deduction is permitted under Section 170 of the Internal Revenue Code of 1986, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S.

Code, does not have to be reported under the reporting requirements of Section 36-25-1(31)(b)(3); provided, that the public official or public employee does not receive any direct financial benefit, and the expenditure is legitimately made to, or on behalf of, the charitable organization.

In addition, while the hospitality provided under this Section is exempt from the reporting requirements of the Ethics Law, it may not last longer than three days and may not otherwise be continuous in nature.

CONCLUSION

Hospitality, where the expenditure is made to, or on behalf of, the Alabama Sports Foundation, Inc., a 501(c)(3) organization to which a federal income tax deduction is permitted under Section 170 of the Internal Revenue Code of 1986, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, does not have to be reported under the reporting requirements of Section 36-25-1(31)(b)(3); provided, that the public official or public employee does not receive any direct financial benefit, and the expenditure is legitimately made to, or on behalf of, the charitable organization.

In addition, while the hospitality provided under this Section is exempt from the reporting requirements of the Ethics Law, it may not last longer than three days and may not otherwise be continuous in nature.

AUTHORITY

By 4-0-1 vote of the Alabama Ethics Commission on August 6, 2008.

John H. Cooper

John H. Cooper, Esq.
Chair
Alabama Ethics Commission