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ADVISORY OPINION NO. 2008-22

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Conflict Of Interest/Board Of Trustee
Member For Alabama A & M University
Entering Into Contract With Millennium
Media, Inc. To Sell Goods To Alabama A &
M University

A member of the board of directors of Alabama A & M University may enter into a contract with Millennium Media, Inc. to sell customized boxes of cookies at various locations on the campus of Alabama A & M University; provided, that the Trustee did not use his position as a member of the board to obtain the opportunity; and, that he not be involved in any aspect of any contract or agreement between Millennium Media, Inc. and Alabama A & M University.

Dear Mr. Gillis:

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 a member of the Alabama A & M Board of Trustees enter into a contract with Millennium Media, Inc. to sell customized boxes of cookies at Alabama A & M's bookstore and elsewhere on campus without violating the Alabama Ethics Law?

FACTS AND ANALYSIS

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

H. Lewis Gillis represents James Montgomery, who owns and operates Aliza's Cookies, Inc. Mr. Montgomery also serves as a Trustee of Alabama A & M University (AAMU) in Normal, Alabama. Mr. Montgomery has been approached by Millennium Media, Inc., with whom neither he nor a family member has an affiliation, regarding a business venture between Millennium Media, Inc. and Alabama A & M University.

Millennium Media, Inc. would like to enter into a contract with AAMU to provide/sell customized boxes of cookies at the University's bookstore or elsewhere on AAMU's campus. AAMU will get a portion of income from each sale, with Millennium Media, Inc. receiving the remainder. Aliza's Cookies, Inc. will not have a business relationship with AAMU. It will, however, contract to provide customized boxes of cookies to Millennium Media, Inc., who will thereafter offer the same for sale at AAMU and other educational institutions.

Aliza's Cookies, Inc. has been in business for approximately 15 years in Anniston, Alabama. During this period of time, Aliza's Cookies, Inc. has sold cookies to a number of organizations to include:

- a) Alabama State Department of Tourism: Designed a 50th Anniversary box commemorating the Rosa Parks Montgomery Bus Boycott.
- b) Alpha Kappa Alpha Society, Inc. and other black Greek letter Fraternities and Sororities: Designed boxes unique to each organization for various special events. Produced some 10,000 designer boxes with cookies for sale at the "AKA" Centennial Anniversary Convention in Washington, D.C. (July —2008).
- c) Alabama State University: Provided cookies for ASU Freshman Orientation and provided cookies sold through ASU at the Magic City Football Classic in Birmingham, Alabama.
- d) United Negro College Fund: This project is being developed, however, Aliza's cookies will sell cookies to the UNCF, who will market the cookies to its member institutions with both sharing in the profits.

Millennium Media, Inc. would like to market this product to all members of the Southwest Athletic Conference (SWAC), specifically during football season. The cookies would either be boxed in generic boxes or customized boxes connected with the particular university.

Millennium Media, Inc. is located in Huntsville, Alabama, and is owned by Karen and Thomas Jackson. Millennium is primarily a music store that has musical equipment mainly for beginner musicians. In addition to selling records and CDs, Millennium will promote cookies in designer boxes for sale at Alabama A & M University and other sites in the general Huntsville area.

Aliza's Cookies, Inc. on occasion contracts directly with specific entities, and on other occasions contracts through third parties, as is the situation pending before the Commission.

Mr. Montgomery, as a Trustee, will not be involved in any contract negotiations between Millennium Media, Inc. and AAMU. Neither will he have review over, supervision of, or contact with that department at AAMU, which provides vendor services for AAMU. Mr. Montgomery's Trustee duties do not put him in a direct or indirect conflict in this transaction, which is much like any other vendor transaction occurring at AAMU.

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(2) defines a business with which the person is associated as:

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business."

Section 36-25-1(8) defines a conflict of interest as:

“(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.”

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 36-25-9(c) states:

“(c) No member of any county or municipal agency, board, or commission shall vote or participate in any matter in which the member or family member of the member has any financial gain or interest.”

Section 36-25-2(b) in pertinent part states:

“(b) An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.”

The Ethics Law allows public officials and public employees to have other financial or business interests, provided a conflict of interest does not exist.

In the facts before the Commission, while Aliza's Cookies, Inc. could contract directly with Alabama A & M University (provided it was done through a bid process, and Mr. Montgomery played no role in the process), it is proposed to be done, in this circumstance, through Millennium Media, Inc. Aliza's Cookies, Inc. will contract with Millennium Media, Inc., who will then contract with Alabama A & M University and other educational institutions.

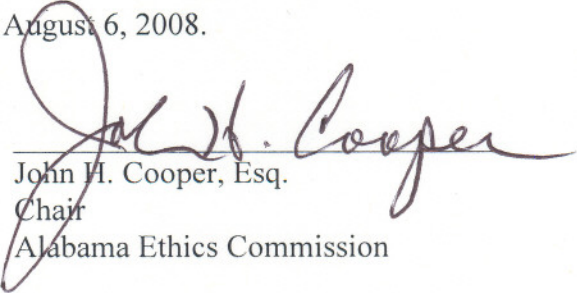
Based on the facts as provided and the above law, a member of the Alabama A & M Board of Trustees may enter into an agreement with Millennium Media, Inc. to market his product at the institution on whose board he serves, as well as other institutions; provided, that he did not use his position as board member to obtain the opportunity; and, that he does not participate in any manner in any transaction, negotiation, etc. between Millennium Media, Inc. and Alabama A & M University.

CONCLUSION

A member of the board of directors of Alabama A & M University may enter into a contract with Millennium Media, Inc. to sell customized boxes of cookies at various locations on the campus of Alabama A & M University; provided, that the Trustee did not use his position as a member of the board to obtain the opportunity; and, that he not be involved in any aspect of any contract or agreement between Millennium Media, Inc. and Alabama A & M University.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on August 6, 2008.



John H. Cooper, Esq.
Chair
Alabama Ethics Commission