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August 4, 2010

ADVISORY OPINION NO. 2010-06

Mr. David M. Stokes
Escambia County Commission
Post Office Box 848
Brewton, Alabama 36427

Conflict Of Interest/County Commissioners
Making Monetary Gifts To County
Employees

Members of the Escambia County
Commission may not make personal
monetary gifts to County employees in
appreciation for their work, when there is
no program or policy in place by the
County establishing guidelines and limits for
the gifts.

Dear Mr. Stokes:

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 members of the Escambia County Commission make monetary gifts to certain County employees in appreciation for their work out of their personal funds?

FACTS AND ANALYSIS

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

David M. Stokes is the Chairman of the Escambia County Commission and is requesting an Advisory Opinion regarding an issue that has presented itself among the County Commission members.

Two of the five County Commissioners would like to make a monetary gift (\$50 - \$75 per employee) to certain County employees in appreciation for their work. The other three Commissioners think that this is inappropriate and could be construed as political favoritism. They understand that public funds cannot be used for this purpose, and would be making these gifts from their personal funds. These gifts would not be made to all County employees, but only to those with whom they have some direct contact, such as certain road department employees, building and maintenance employees, and the commission secretary.

There is concern among some County Commissioners that making monetary gifts to certain County employees would result in one or more violations of the Ethics Law. In particular, the question has been raised whether it would be a violation of the Ethics Law for the County employees to accept these gifts, since acceptance of the gift would be receiving money in addition to that received as salary by the employee in his or her official capacity. There is also concern that these gifts could be viewed as the employees receiving a thing of value for the purpose of influencing official action, i.e. that the County Commissioners would look for certain actions by the employees receiving these gifts. If this is the case, there is a question whether this would also be deemed a violation of the law by the County Commissioners if someone were to suggest that they were making the gift to solicit certain actions from these employees.

Mr. Stokes states that there is certainly no intent to do anything improper here. These Commissioners are genuinely interested in rewarding the work of these employees with whom they have contact and believe this is a good way to show their appreciation. However, no one wants to place any County employees in danger of inadvertently violating any Ethics Law, and all of the County Commissioners want to make sure that they do not violate the law, either. Therefore, Mr. Stokes has been asked to request an opinion from this office to resolve this issue.

On July 8th, more information was received from Mr. Stokes.

In subsequent correspondence, Mr. Stokes states that there will be no policy or guidelines adopted by the County Commission concerning how money will be distributed. They are not planning on establishing, for example, an employee of the month or other such program with a

policy or methodology for selection of employees to receive the funds. The amount to be given would be determined by the Commissioners giving the gifts.

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 36-25-5(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 36-25-2(a)(3) states:

“(a) The Legislature hereby finds and declares:

(3) No public office should be used for private gain other than the remuneration provided by law.”

Section 36-25-7 states:

“(a) No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive a thing of value for the purpose of influencing official action.

(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.

(c) No person shall offer or give a family member of the public official or family member of the public employee a thing of value for the purpose of influencing official action.

(d) No public official or public employee, shall solicit or receive any money in addition to that received by the public official or public employee in an official capacity for advice or assistance on matters concerning the legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member. Notwithstanding the foregoing, nothing in this section shall be construed to prohibit a public official or public employee from the performance of his or her official duties or responsibilities.”

It would be improper for the County Commission to indiscriminately give money to County employees for doing the job they are already paid to do. This could in fact lead to charges of favoritism and could easily establish at least the perception of a quid pro quo. In other words, a County employee will do what a specific County Commissioner wants him to do in the hopes of obtaining a monetary gift from that Commissioner.

There are many public entities throughout the state that have an employee of the month program, governed by rules and guidelines established by that public body. Without such rules or guidelines in place, gifts of this nature may not be given, nor may they be accepted.

Based on the facts as provided and the above law, members of the Escambia County Commission may not make personal monetary gifts to County employees in appreciation for their work, when there is no program or policy in place by the County establishing guidelines and limits for the gifts.

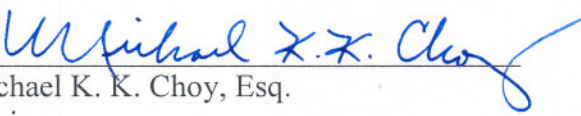
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CONCLUSION

Members of the Escambia County Commission may not make personal monetary gifts to County employees in appreciation for their work, when there is no program or policy in place by the County establishing guidelines and limits for the gifts.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on August 4, 2010.



Michael K. K. Choy, Esq.
Chair
Alabama Ethics Commission