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STATE OF ALABAMA
ETHICS COMMISSION

MAILING ADDRESS
P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS
RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104



James L. Sumner, Jr.
Director

TELEPHONE (334) 242-2997
FAX (334) 242-0248
WEB SITE: www.ethics.alabama.gov

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Michael I. Spearing, Esquire
Legal Counsel
The University of Alabama System
The University of Alabama Office
222 Rose Administration Building
Box 870106
Tuscaloosa, Alabama 35487-0106

Thing Of Value/Prospective Student-Athletes Designating Persons Who Are Public Officials Or Members Of A Household Of Such Persons As Recipients Of Complimentary, Non-Transferable Admissions To An Athletic Event Provided To The Prospective Student-Athlete On An Official Or Unofficial Visit

A prospective student-athlete may designate persons who are public officials or members of a household of such persons as recipients of complimentary, non-transferable admissions to an athletic event provided to the prospective student-athlete on an official or unofficial visit when the public official or family member of the public official is there in a representative capacity, as a chaperone, teacher, school administrator, etc., and where the activity is allowed under the NCAA Constitution and Bylaws.

Thing Of Value/Division 1 University Providing High School, Preparatory School Or Two Year College Coaches And Other School Administrators Who Are Public

Employees Or Public Officials Or Members
Of The Household Of Such Persons
Two Complimentary, Non-
Transferable Admissions To Athletic
Events

Division 1 Universities may provide high school, preparatory school or two year college coaches and other school administrators who are public employees or public officials or members of the household of such persons two complimentary, non-transferrable admissions to athletic events, when the individual is responsible for teaching or directing an activity in which a prospective student-athlete is involved, and where the activity is allowed under the NCAA Constitution and Bylaws.

Thing Of Value/Current Student-Athlete
Designating Persons Who Are Public
Employees Or Public Officials Or Members
Of The Household Of Such Persons As
Recipients Of The Complimentary, Non-
Transferrable Admissions To An Athletic
Event As Guests Of The Student-Athlete

Student-athletes may designate persons who are public employees or public officials or members of the household of such persons as recipients of the complimentary, non-transferrable admissions to an athletic event as guests of the student-athlete, when the public official or public employee is a family member, a family friend or is attending the event in an official or representative capacity, and where the activity is allowed under the NCAA Constitution and Bylaws.

Dear Mr. Spearing:

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.

QUESTIONS PRESENTED

1. May a prospective student-athlete designate persons who are public officials, or members of the household of such persons, as recipients of the complimentary, non-transferable admissions to an athletic event provided to the prospective student athlete on an official or unofficial visit under the conditions outlined in NCAA bylaw 13.6.7.2 and 13.7.2.1?
2. May the University provide high school, preparatory school, or two year college coaches and other school administrators who are public employees or public officials, or members of the household of such persons, two complimentary, non-transferable admissions to athletic events under the conditions outlined in NCAA bylaw 13.8.1?
3. May a current student-athlete designate persons who are public employees or public officials, or members of the household of such persons, as recipients of the complimentary, non-transferable admissions to an athletic event as guests of the student-athlete under the conditions outlined in NCAA bylaw 16.2.1.1 and 16.2.1.1.1?

FACTS AND ANALYSIS

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

The University of Alabama operates a Division I intercollegiate athletics program governed, in part, by the National Collegiate Athletic Association ("NCAA") Constitution and Bylaws. These NCAA bylaws allow the University to furnish complimentary, non-transferable admissions to intercollegiate athletic events to certain groups of persons. Those persons and the governing bylaws are as follows:

1. Prospective student-athletes on either an official or unofficial visit to campus receive three complimentary, non-transferable admissions to an athletic event.

NCAA bylaw 13.6.7.2 (Official Visits); NCAA bylaw 13.7.2.1 (Unofficial Visits).

2. High School, preparatory school, or two year college coaches and any other individual responsible for teaching or directing an activity in which a prospective student-athlete is involved receive for athletic events two complimentary, non-transferable admissions to the athletic event. NCAA bylaw 13.8.1.
3. Guests of student-athletes.
 - a. Four complimentary, non-transferable admissions per student-athlete, to the sport in which a student-athlete competes for all regular season events. NCAA bylaw 16.2.1.1.
 - b. Six complimentary, non-transferable admissions per student-athlete, to the sport in which a student-athlete competes for post season events. NCAA bylaw 16.2.1.1.1.

All ticketed sports at a university are covered by these bylaws. The University of Alabama currently issues tickets for the following sports: football, men's basketball, women's basketball, volleyball, gymnastics, softball, and baseball. In all three of these circumstances, complimentary admissions are administered to each guest through a pass list. This means "hard tickets" are not issued to the guest in advance of the contest. Many of these persons receiving complimentary, non-transferable admission to these athletic events are public employees or public officials and some may be the member of the household of a public employee or a public official.

These complimentary, non-transferable admissions serve as a method for parents, high school coaches, teachers, administrators, and other friends and family members to learn about the University, both athletically and academically, so that they can better advise the high school students with whom they are associated in the process of selecting a college or university to attend after high school. In addition to attending the athletic event, recipients of complimentary, non-transferable admissions may also attend presentations on academics, take tours of academic facilities, and schedule other meetings on campus to discuss matters of interest. All of these opportunities are part of the larger recruitment efforts of the University beyond prospective student-athletes.

A prohibition on the complimentary, non-transferable admissions for public employees and public officials under the limited circumstances allowed by NCAA bylaws reduces opportunities of these persons to learn about the University and provide sound advice to prospective student-athletes and other high school students. Such a prohibition would also place Alabama Division I universities at a severe recruiting and competitive disadvantage compared not only to other universities in the Southeastern Conference but also to Division I universities

across the nation. None of these universities, to the best of the University's knowledge, are prohibited by the laws of their governing jurisdiction from offering complimentary admissions to intercollegiate athletic events according to the limitations of the NCAA bylaws.

The Alabama Code of Ethics contains numerous restrictions on providing a "thing of value" to public employees and public officials or members of their family. The recent changes to the Code of Ethics prohibit providing anything, regardless of whether it is a "thing of value," to public employees and public officials, or members of their family, for the purpose of corruptly influencing official action. (*Alabama Code* Section 36-25-7.) Interpreting these recent changes to prohibit what has been a longstanding, NCAA-approved practice of providing complimentary admission to athletic events would appear to be inconsistent with the objectives of those recent changes and contrary to the best interests of the student-athlete. In addition, providing such complimentary admissions would not appear to be for the purpose of corruptly influencing official action of the public employee or public official.

The Code of Ethics recognizes that the receipt of such items may otherwise be allowed by law and makes exceptions that allow the receipt of such items in such circumstances. The University wishes to obtain guidance through an Advisory Opinion that the receipt of complimentary, non-transferable admissions to intercollegiate athletic events by certain public employees or public officials and members of their household, as expressly permitted and defined under governing provisions of the NCAA Constitution and Bylaws is not a violation of the Alabama Code of Ethics, and therefore poses the previous three questions for consideration.

The Alabama Ethics Law, Code of Alabama 1975, Section 36-25-1(26) defines a public official as:

"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 26-5-1(14) defines a family member of the public official as:

"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(25) defines a public employee as:

“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(13) defines a family member of the public employee as:

“The spouse or a dependent of the public employee.”

Section 36-25-1(33)(b)(8) states:

“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:

8. Anything that is paid for by a governmental entity or an entity created by a governmental entity to support the governmental entity or secured by a governmental entity under contract, except for tickets to a sporting event offered by an educational institution to anyone other than faculty, staff, or administration.”

Section 36-25-1(33)(b)(12) states:

“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:

12. Payment of or reimbursement for actual and necessary transportation and lodging expenses, as well as waiver of registration fees and similar costs, to facilitate the attendance of a public official or public employee, and the spouse of the public official or public employee, at an educational function or widely attended event of which the person is a primary sponsor. This exclusion applies only if the public official or public employee meaningfully participates in the event as a speaker or a panel participant, by presenting information related to his or her agency or matters pending before his or her agency, or by performing a ceremonial function appropriate to his or her official position; or if the public official's or public employee's attendance at the event is appropriate to the performance of his or her official duties or representative function.”

Section 36-25-1(33)(b)(14) states:

“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:

14. Hospitality, meals, and other food and beverages provided to a public official or public employee, and the spouse of the public official or public employee, as an integral part of an educational function, economic development function, work session, or widely attended event, such as a luncheon, banquet, or reception hosted by a civic club, chamber of commerce, charitable or educational organization, or trade or professional association.”

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:

“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. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.”

The Ethics Law underwent major revisions in the Special Session held in December of 2010. Part of the intent of the Ethics reforms was to do away with the longstanding practice of giving free tickets to sporting events to public officials and/or public employees, merely because they were public officials or public employees. As a general rule, it is now prohibited for public

officials and public employees to receive tickets to sporting or recreational events, merely for the fact of their public service. The question to be asked in these scenarios is “Is there a valid reason or purpose for the public official/public employee to be attending the event?”

Recognizing there are situations where it may be necessary or important to provide free tickets, the Legislature included several exceptions to its new definition of a thing of value. Included among those definitions are the scenarios where the public official/public employee is attending the event in his or her official capacity to either perform ceremonial functions, or they are attending in a representative or other official capacity.

In the three scenarios set out by the University, there is nothing improper for an NCAA Division 1 University to provide complimentary, non-transferable passes to athletic events to prospective student-athletes, their family and any coach, school administrator or other public official who is attending the event as both a chaperone and in his or her official capacity to assist the prospective student-athlete. In addition, it is not improper for the University to provide complimentary passes to teachers, administrators, etc., who are directing or overseeing a program or other activity in which the prospective student-athlete is participating.

As to question number three, current student-athletes may designate public officials or public employees to receive the complimentary, non-transferable admissions; provided, the public employee or public official is either a family member or is attending in his or her official or representative capacity.

It also should be pointed out that all these actions are governed by the NCAA Constitution and Bylaws, and therefore, could be considered “as otherwise authorized by law.”

CONCLUSION

A prospective student-athlete may designate persons who are public officials or members of a household of such persons as recipients of complimentary, non-transferable admissions to an athletic event provided to the prospective student-athlete on an official or unofficial visit when the public official or family member of the public official is there in a representative capacity, as a chaperone, teacher, school administrator, etc., and where the activity is allowed under the NCAA Constitution and Bylaws.

Division 1 Universities may provide high school, preparatory school or two year college coaches and other school administrators who are public employees or public officials or members of the household of such persons two complimentary, non-transferable admissions to athletic events, when the individual is responsible for teaching or directing an activity in which a prospective

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student-athlete is involved, and where the activity is allowed under the NCAA Constitution and Bylaws.

Student-athletes may designate persons who are public employees or public officials or members of the household of such persons as recipients of the complimentary, non-transferable admissions to an athletic event as guests of the student-athlete, when the public official or public employee is a family member, a family friend or is attending the event in an official or representative capacity, and where the activity is allowed under the NCAA Constitution and Bylaws.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on August 3, 2011.



Braxton L. Kittrell, Jr., Esq.
Chair
Alabama Ethics Commission