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October 5, 2011

## ADVISORY OPINION NO. 2011-11

Ms. Renee Anne Casillas  
Executive Director, ACEC/Alabama  
(American Council of Engineering  
Companies of Alabama)  
531 Herron Street  
Montgomery, Alabama 36104

### Contributions To And Solicitations By Charitable Organizations

Lobbyists and principals may contribute to any charitable or non-profit organization that they so desire, regardless of whether or not public officials/public employees volunteer for the organization or serve on its board. A public official/public employee may not solicit a lobbyist to contribute to a charitable or non-profit organization.

Public officials and public employees may, on behalf of a charitable organization, sign a solicitation letter; provided, the solicitation letter is generic and is done in such a manner that individuals or entities receiving the solicitation do not feel obligated to contribute.

Public officials and public employees may not, even on behalf of a charitable organization, solicit any thing other than a campaign contribution from a lobbyist.

Public officials and public employees may not exert undue influence over persons or principals to contribute to a charitable organization, when those individuals solicited have matters pending before the public body on which the public official serves or the public employee is employed.

Financial Support, Underwriting And/Or Sponsorships Of Educational Functions And/Or Widely Attended Events

Lobbyists/principals and vendors may provide financial support, underwriting or sponsorship of conferences held for public officials or public employees; provided, they are not attempting to corruptly influence official action by their sponsorship; and further, where the lobbyists have not been solicited for their financial support, underwriting or sponsorship.

Lobbyists/principals and vendors may provide hospitality to public officials and public employees in relation to an educational function or a widely attended event; provided, it is an integral part of the overall event.

Lobbyists/principals and vendors may provide hospitality to participants in an educational function or a widely attended event, when the hospitality provided is not an integral part of the event, but is in conjunction with the event; provided, the hospitality has been sanctioned by the sponsors of the event.

The \$25/\$50 limit on expenditures per meal placed on lobbyists and principals does not apply if the event falls under one of the

other exceptions contained in the new definition of a thing of value.

Sporting and recreational events that are not an integral part of an educational function or a widely attended event, but are stand-alone events, are no longer permissible under the Alabama Ethics Law.

Lobbyists and principals may not “stack” their expenditures to get around the \$25/\$50 limitation, regardless of whether or not they are lobbying on the same issues.

Dear Ms. Casillas:

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.

### **FACTS AND ANALYSIS**

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

The American Council of Engineering Companies of Alabama (ACEC/Alabama) respectfully requests an Advisory Opinion from the Alabama Ethics Commission regarding several issues relating to Act No. 2010-764 (“the Act”). ACEC/Alabama appreciates very much the opportunity to request this Advisory Opinion and to seek the Commission’s guidance and clarification on issues which deeply impact the member firms which make up ACEC/Alabama.

The American Council of Engineering Companies (ACEC) is the voice of America’s engineering industry. Council members – numbering more than 5,000 firms representing more than 500,000 employees throughout the country – are engaged in a wide range of engineering works that propel the nation’s economy, and enhance and safeguard America’s quality of life. These works allow Americans to drink clean water, enjoy a healthy life, take advantage of new technologies, and travel safely and efficiently. The Council’s mission is to contribute to America’s prosperity and welfare by advancing the business interests of member firms.

ACEC’s roots date back to 1909 when a small group of engineers in private practice established the American Institute of Consulting Engineers (AICE), the forerunner of ACEC.

Today ACEC is a large federation of 51 state and regional councils representing the great breadth of America's engineering industry. ACEC member firms employ hundreds of thousands of engineers, architects, land surveyors, scientists, and other specialists, responsible for more than \$200 billion of private and public works annually. Member firms range in size from a single registered professional engineer to corporations employing thousands of professionals.

In Alabama, our members are engaged with state government and other public and private entities to ensure our public and private infrastructure works meet the highest standards to protect and ensure the quality of life for the citizens of our State. Our member professional engineers take their responsibility to ethical standards seriously – not just for the quality of the jobs they work on – but for the safety and well-being of the public at large.

ACEC/Alabama seeks clarification regarding the following scenarios and how they may be governed by the Act:

1. It is common for charities, non-profits and other benevolent organizations to include among their boards, steering committees, fundraising endeavors and the like, well-connected and influential people from their communities, who are likewise eager to lend their talents to worthy organizations and causes they support.

Oftentimes, public officials and public employees serve in this capacity for various charitable organizations and participate in fundraising efforts on behalf of those organizations.

- a. Is it permissible under the Act for a person or principal who either does business with, or seeks to do business with, a state, county or municipal governmental instrumentality, to provide financial support (through either the purchase of tickets to events or merely monetary donations) to a charity or other private organization with which a public official or public employee works for said governmental instrumentality?
- b. Is it permissible under the Act for a person or principal who either does business with, or seeks to do business with, a state, county or municipal governmental instrumentality to respond affirmatively to either a verbal request or a written request on charity letterhead from a public official or public employee of said governmental instrumentality to provide financial support to a charitable organization, purchase tickets to a charitable event, underwrite a charitable sponsorship, contribute to a scholarship fund, purchase season football tickets from a high school athletic booster club, and the like?

- c. Is it permissible under the Act for a person or principal who either does business with, or seeks to do business with, a state, county or municipal governmental instrumentality to respond affirmatively to a written request on charity letterhead from a private citizen employee of the charity (e.g., executive director or staff member), but where the charity letterhead identifies one or more public officials or public employees as being affiliated with the charity?
- d. If the scenario set out in (c) above is permissible, does the answer change if a public official or public employee separately urges or encourages the person or principal to respond affirmatively to the request?

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 36-25-23(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 Commission has limited jurisdiction over lobbyists and principals. That jurisdiction is generally limited to registration and reporting requirements, as well as the prohibition against offering things of value to public officials/public employees, which would corruptly influence official action, thereby creating a quid pro quo. Under the scenario set out in question one, a person, principal, lobbyist, etc., may contribute to any charitable organization that they so desire. They may purchase football tickets, provide financial support, etc. There is nothing in the Ethics Law that would prohibit this, regardless of who volunteers for the charity or who serves on the charity’s board. This extends to situations where a request is made on charity letterhead signed by the executive director or staff member, even where a public official or public employee is affiliated with the charity. Any prohibitions that exist are attached to the public official and public employee, and any solicitations they may make on behalf of the charitable organization.

Public officials and public employees may, on behalf of a charitable organization, sign a solicitation letter; provided, the solicitations are made in such a manner that the individual or entity receiving the solicitation does not feel obligated to respond. The purpose is to prohibit even the appearance of a quid pro quo. In other words, "if you want to continue getting public business, you need to respond to the solicitation."

Public officials and public employees may not, even on behalf of a charitable organization, solicit any thing, other than a campaign contribution, from a lobbyist. If a public official or a public employee is signing the letter on behalf of the charitable organization, at a minimum, there needs to be a disclaimer stating that lobbyists may not be solicited and were inadvertently sent the letter.

Better yet, the charitable organization (if a solicitation is being signed by a public official or public employee) must take precautions to see that the letter is not even sent to lobbyists.

More problematic is question 1(b), where a public official or public employee separately urges or encourages a person or principal to respond to a request for a contribution. While generally this must be fact-specific, if the person or entity solicited feels undue influence to contribute based on the fact that the public official or public employee has "urged or encouraged" the request, then that solicitation may be an improper use of office to benefit a business with which the public official/public employee is associated. This is particularly the case when a public official or public employee is soliciting on behalf of an organization on whose board they serve, as the board service makes the charitable organization a business with which they are associated.

2. The American Association of State Highway and Transportation Officials (AASHTO) and the Southeastern Association of State Highway and Transportation Officials (SASHTO) are nonprofit, nonpartisan associations made up exclusively of departments of transportation (DOTs) from around the United States. Hence, Alabama representatives of AASHTO and SASHTO are public officials and public employees.

Throughout Alabama, there are numerous other organizations whose dues-paying members are exclusively public officials and public employees (e.g., county, city and municipal employee associations).

Financial support of educational functions by way of underwriting and sponsorships appears to be lawful, even where some of the attendees of educational functions will be public officials and public employees. *See Advisory Opinion 2011-01.* In most instances, however, educational functions consist of conferences that are hosted or put on by trade associations and industry groups which are made up of a mix of private citizens and public officials/employees.

What about situations where the membership of the organization hosting an educational function is exclusively made up of public officials and public employees?

- a. Is it permissible under the Act for persons or principals who either do business with, or seek to do business with, the Alabama DOT, to provide financial support, underwriting or sponsorship of AASHTO and SASHTO conferences in light of the fact that the only members of those organizations are, per se, public officials and public employees?
- b. Further, is it permissible under the Act for persons or principals who either do business with, or seek to do business with, the Alabama DOT, to provide meals, beverages and other food (e.g., dinners, receptions, cocktail parties, cookouts, etc.) and/or hospitality (golf outings, fishing and boating trips, hunting excursions, etc.) to Alabama public officials and public employees who are in attendance at AASHTO and SASHTO conferences (which typically take place throughout the United States from year-to-year), when said meals and hospitality are not official conference agenda items, but would take place during the conference? If so, are there any applicable dollar limits placed on either persons, lobbyists or principals so providing meals and/or hospitality?

With regard to AASHTO, SASHTO and other similar events, it is commonplace for private companies to provide high-level conference sponsorships, which typically cost thousands of dollars. Such sponsorships entitle said companies to host receptions, cocktail parties, dinners, cookouts and the like on one or more evenings of the conference. The cost of such events is also typically thousands of dollars.

- c. May an engineer or engineering company that is a principal under the law by virtue of the fact that it employs, hires or otherwise retains a lobbyist provide high-level sponsorship of AASHTO and SASHTO events? Likewise, may a principal host AASHTO and SASHTO members, along with other conference attendees, at receptions, cocktail parties, dinners, cookouts, etc., during conferences?

Sections 36-25-1(33)(b)(12), (13), (14), (16) and (17) state:

“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.

13. Payment of or reimbursement for actual and necessary transportation and lodging expenses to facilitate a public official's or public employee's participation in an economic development function.

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.

16. Meals and other food and beverages provided to a public official or public employee in a setting other than any of the above functions not to exceed for a lobbyist twenty-five dollars (\$25) per meal with a limit of one hundred fifty dollars (\$150) per year; and not to exceed for a principal fifty dollar (\$50) per meal with a limit of two hundred fifty dollars (\$250) per year. Notwithstanding the lobbyist's limits herein shall not count against the principal's limits and likewise, the principal's limits shall not count against the lobbyist's limits.

17. Anything either (i) provided by an association or organization to which the state or, in the case of a local government official or employee, the local government pays annual dues as a membership requirement or (ii) provided by an association or organization to a public official who is a member of the association or organization and, as a result of his or her service to the association or organization, is deemed to be a public official. Further included in this exception is payment of reasonable compensation by a professional or local government association or corporation to a public official who is also an elected officer or director of the professional or local government association or corporation for services actually provided to the association or corporation in his or her capacity as an officer or director."

As has been previously pointed out, there is nothing improper in businesses sponsoring or providing financial assistance to assist in events as set out in the above questions. The only prohibition, as has been previously noted, is that this may not be used as an opportunity to corruptly influence official action.

Stand-alone sporting or recreational events (golf, fishing, football games, etc.) may no longer be accepted by public officials/employees, unless they are an integral part of an overall event. In addition, the event may not be a sham organized for the sole purpose of providing a sporting or recreational opportunity to public officials/public employees.

A sponsor may provide hospitality in conjunction with the event, as an integral part of the event. This would include meals after hours and social or sporting events to be held for attendees. There are no dollar limits on expenditures in this scenario, as Section 36-25-1(33)(b)(16) does not apply.

Likewise, principals may host cocktail parties, receptions, cookouts, etc. during conferences for conference attendees and Section (16) as set out above does not apply.

3. Advisory Opinions 2011-01 and 2011-06 addressed the issues of hospitality such as golf tournaments and situations in which they would constitute a lawful exception in the definition of “thing of value.” Generally, ACEC-AL’s understanding is that if a golf tournament is an integral part of an educational function, it is permissible to provide such hospitality to public officials and public employees who are attending or participating in the educational function event; a stand-alone golf outing, however, would not be a permissible form of hospitality.

What about the situation where persons, principals and public officials/employees are attending an educational function, economic development function or widely attended event (“conference”) that does not include as an agenda item a formal golf tournament for conference attendees?

- a. Is it permissible under the Act for a person or principal to provide hospitality (such as a round of golf or a fishing excursion) to a public official or public employee when they are attendees of a conference, during breaks, at the close of a conference day, or at the beginning of a conference day, when no official conference activities are taking place, and, if so, are there any dollar limits on such expenditures?

With respect to charity golf tournaments, sporting clay shoots, fishing tournaments, and similar events – which are otherwise stand-alone events unaffiliated with educational functions, etc. – is it permissible for an engineer or engineering firm to sponsor a team and, as part of its sponsorship invite one or more clients who are public officials and/or public employees to participate as their guests?

Advisory Opinion No. 2011-01 states:

“Public officials/public employees may not participate in strictly social events (unless they pay for their participation just as the general public would) such as golf tournaments, unless the event is part of an educational function, widely attended event or economic development function, etc., and is not, and cannot reasonably be perceived as a subterfuge for a purely social, recreational or entertainment function.”

Section 36-25-1(11) defines an Economic Development Function as:

“Any function reasonably and directly related to the advancement of a specific, good-faith economic development or trade promotion project or objective.”

Section 36-25-1(12) defines Educational Function as:

“A meeting, event, or activity held within the State of Alabama, or if the function is predominantly attended by participants from other states, held within the continental United States, which is organized around a formal program or agenda of educational or informational speeches, debates, panel discussions, or other presentations concerning matters within the scope of the participants’ official duties or other matters of public policy, (including social services and community development policies) economic development or trade, ethics, government services or programs, or government operations, and which, taking into account the totality of the program or agenda, could not reasonably be perceived as a subterfuge for a purely social, recreational, or entertainment function.”

Section 36-25-1(35) defines Widely Attended Event as:

“A gathering, dinner, reception, or other event of mutual interest to a number of parties at which it is reasonably expected that more than 12 individuals will attend and that individuals with a diversity of views or interest will be present.”

Based on the precedent set out by the Commission, a person or principal may clearly provide hospitality (such as a round of golf or a fishing excursion) to attendees of a conference, when it is an integral part of that event. It becomes more problematic when it is done in conjunction with an event, but is not an official part of the event.

Clearly, it would be a subterfuge if a person or principal was inviting public officials and/or employees to participate in a social or recreational event that was not an official part of a conference, when it may take that person or persons away from planned activities that form the reason they are attending the conference in the first place.

On the other hand, even though it may not be an official part of the conference, if it is an event that takes place at the close of the conference day, the beginning of the conference day, or when no other conference activities are taking place, and it consists of individuals attending the conference; and further, where it is sanctioned by the sponsors of the conference, it would not violate the Ethics Law.

The \$25/\$50 expenditure limits would not apply under this scenario.

Somewhat more problematic, are charity events.

In interpreting the new Ethics Law, the Commission has found itself having to balance the ability of charitable organizations to raise money with the fact that public officials and public employees may only, under limited circumstances, be given what would otherwise be considered a thing of value.

Hospitality is allowable if it is an integral part of an educational function, economic development function, widely attended event, etc. Therefore, a person or principal may invite a public official or public employee to participate on their team at a charitable event, provided, there is some informational aspect to the event. In other words, someone will take some time to discuss the purposes of the charity, the need for fund raising, where the money goes, etc.

Stand-alone recreational events are no longer acceptable under any circumstances.

4. Finally, Section 36-25-1(23) of the Act defines a principal as a “person or business which employs, hires or otherwise retains a lobbyist.” Pursuant to Section 36-25-1(16) of the Act, an exception to the definition of “thing of value” are meals and other food and beverages provided by a principal to a public official or public employee in a setting not already subject to an enumerated exception, not exceeding \$50 per meal with a limit of \$250 per year.

In the situation where an engineer or engineering firm employs, hires or otherwise retains a lobbyist, exactly who qualifies as the principal? In the case of an engineer or engineering firm that has more than one associate or employee, is each associate or employee considered the principal (example: ACME Engineering has ten (10) employees, permitting each employee to expend up to \$250 per year on a particular public official), or is the engineering firm itself solely considered the principal, regardless of how many employees or associates it has (example: ACME Engineering has ten (10) employees, but all 10 must stay within only one (1) \$250 limit per year)?

The question set out in question 4 appears to attempt to validate the concept known as “stacking.” A principal, in this case, the engineering firm, may only spend \$250 per year on a public official or public employee. It does not mean that ACME Engineering’s ten (10) employees can each spend \$250 per year, it means ACME Engineering, through its representatives may only spend \$250 per year. To hold otherwise, would violate the intent of the Ethics Law.

## CONCLUSION

This opinion has attempted to address as many issues under the new Ethics Law as is possible. While this opinion may not address all foreseeable circumstances, it should provide guidance in most situations. Below are listed the principal's opinion and interpretation of some of these areas.

Lobbyists and principals may contribute to any charitable or non-profit organization that they so desire, regardless of whether or not public officials/public employees volunteer for the organization or serve on its board. A public official/public employee may not solicit a lobbyist to contribute to a charitable or non-profit organization.

Public officials and public employees may, on behalf of a charitable organization, sign a solicitation letter; provided, the solicitation letter is generic and is done in such a manner that individuals or entities receiving the solicitation do not feel obligated to contribute.

Public officials and public employees may not, even on behalf of a charitable organization solicit any thing other than a campaign contribution from a lobbyist.

Public officials and public employees may not exert undue influence over persons or principals to contribute to a charitable organization, when those individuals solicited have matters pending before the public body on which the public official serves or the public employee is employed.

Lobbyists/principals and vendors may provide financial support, underwriting or sponsorship of conferences held for public officials or public employees; provided, they are not attempting to corruptly influence official action by their sponsorship; and further, where the lobbyists have not been solicited for their financial support, underwriting or sponsorship.

Lobbyists/principals and vendors may provide hospitality to public officials and public employees in relation to an educational function or a widely attended event; provided, it is an integral part of the overall event.

Lobbyists/principals and vendors may provide hospitality to participants in an educational function or a widely attended event, when the hospitality provided is not an integral part of the event, but is in conjunction with the event; provided, the hospitality has been sanctioned by the sponsors of the event.

The \$25/\$50 limit on expenditures per meal placed on lobbyists and principals does not apply if the event falls under one of the other exceptions contained in the new definition of a thing of value.

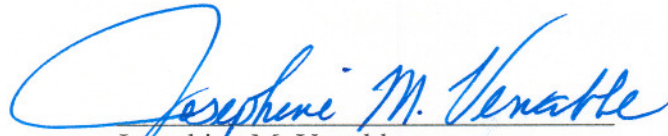
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Lobbyists and principals may not “stack” their expenditures to get around the \$25/\$50 limitation, regardless of whether or not they are lobbying on the same issues.

**AUTHORITY**

By 4-0 vote of the Alabama Ethics Commission on October 5, 2011.



Josephine M. Venable  
Acting Chair in the absence of the Chair  
Alabama Ethics Commission