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October 1, 2014

ADVISORY OPINION NO. 2014-05

Paul D. Hansen, P.E.
Secretary/Treasurer
American Society of Civil Engineers
P.O. Box 3303
Montgomery, Alabama 36109

Conflict Of Interest/Employee Of The
Alabama Department Of Transportation
(ALDOT) Serving As A Representative Of
The American Society Of Civil Engineers
(ASCE) And Soliciting Funds To Host
Events On Behalf Of The ASCE

An ALDOT employee serving as a
representative of the ASCE may not solicit
subordinates, entities they audit, inspect or
regulate, or vendors doing business with
their entity for a contribution to the ASCE,
regardless of the purpose of the solicitation.

An ALDOT employee serving as a
representative of the ASCE may not solicit
anything other than a campaign contribution
from a lobbyist.

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Dear Mr. Hansen:

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 an Alabama Department of Transportation (ALDOT) employee, who serves as Secretary/Treasurer of the American Society of Civil Engineers (ASCE) solicit entities on behalf of the ASCE for events to be held to support the efforts of the local branch of ASCE?

FACTS AND ANALYSIS

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

Paul Hansen is the Secretary/Treasurer of the American Society of Civil Engineers (ASCE) Montgomery Branch. Their monthly meetings are generally held at the Department of Transportation (ALDOT) as the majority of their members are ALDOT employees. They are attempting to grow their branch by launching a web page, offering scholarships, and hosting events such as a yearly golf tournament. Mr. Hansen states this will cost money and, as a State employee, he was under the impression that they may not solicit funds. Because of this, they have not been able to ask for sponsorships for the new web page or sponsorships to host events such as a golf tournament. His question is based on this.

Mr. Hansen states that this request is designed for any member of their professional society that may serve as a committee member for a specific project.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(26) 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(8) defines a conflict of interest as:

“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 36-25-1(2) defines a business with which the person is associated as:

“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 36-25-5(a) states:

“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.”

Section 36-25-5(e) states:

“No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity.”

A public official or public employee may not, under any circumstances, solicit a thing of value from a subordinate, a vendor doing business with that public entity, or an individual or entity that is regulated or inspected by the public entity employing that individual, nor may a public official or public employee use any public resources, including but not limited to time when doing business on behalf of an outside entity.

Therefore, an ALDOT employee affiliated with the American Society of Civil Engineers may not solicit contributions or funds from entities doing business, with or in any way, inspected or regulated by ALDOT, regardless of the purpose of the solicitation. Likewise, any solicitations that are done may not be done while the individual is being paid by the State of Alabama or any other public entity.

In Advisory Opinion No. 2011-11, the Commission opined that:

“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.”

Even more importantly, Advisory Opinion No. 2011-11 held that:

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

Therefore, ALDOT employees serving with the American Society of Civil Engineers, may not solicit lobbyists to contribute anything to their organization, regardless of its purpose.

The flip side of this is that anyone may contribute to a non-profit organization if they so desire. The issue before the Commission is, did that donation occur because of a solicitation, and was the individual or entity solicited a prohibited source. As held in Advisory Opinion No. 2011-11, a generic letter may be sent to various entities requesting contributions, provided, no individual or business is singled-out, and the individuals receiving the letter do not feel pressured into contributing. The best solution in this scenario is to have a private-sector member of the organization make the solicitations, as they are not subject to the confines of the Alabama Ethics Law.

The fact that a public official or a public employee serves as an officer of an entity regardless of whether it is a for-profit or not-for-profit entity, makes that organization a business with which the individual is associated. Section 36-25-5 prohibits a public official or public employee from using their official position to benefit a business with which they are associated.

Based on the facts as provided and the above law, an ALDOT employee serving as a representative of a private organization may not solicit anything on behalf of the private organization from a lobbyist (other than a campaign contribution), from a subordinate, from a business or entity where they personally participate in the direct regulation, audit or investigation of that entity, or from a vendor doing business with that public employee's entity.

Likewise, no public resources, including but not limited to time, labor, etc. may be used to assist in the fund-raising efforts on behalf of the private entity.

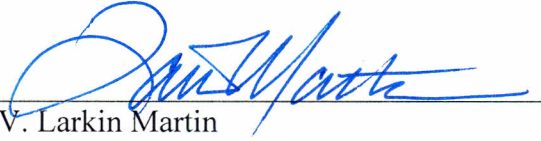
CONCLUSION

An ALDOT employee serving as a representative of the ASCE may not solicit subordinates, entities they audit, inspect or regulate, or vendors doing business with their entity, for a contribution to the ASCE, regardless of the purpose of the solicitation.

An ALDOT employee serving as a representative of the ASCE may not solicit anything other than a campaign contribution from a lobbyist.

AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on October 1, 2014.


V. Larkin Martin
Acting Chair in the absence of the Chair
Alabama Ethics Commission