



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

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

April 26, 2017

**ADVISORY OPINION NO. 2017-04**

The Honorable Laura Petro  
Circuit Judge, Tenth Judicial Circuit  
Jefferson County Courthouse  
801 Richard Arrington, Jr. Blvd.  
Suite 506  
Birmingham, Alabama 35203

Use of Excess Campaign Funds/An elected official may donate excess campaign funds to a 501(c)(3) charitable organization on whose Board of Directors they serve, when the position is non-compensated and neither the public official, nor their family members, nor any other business with which they are associated, receives any personal gain from either the donation or the 501(c)(3).

Dear Ms. Petro:

The Alabama Ethics Commission is in receipt of your request for a formal Advisory Opinion of this Commission, and this opinion is rendered pursuant to that request.

**QUESTION PRESENTED**

May a public official, as defined by the Alabama Ethics Law, donate excess campaign funds to a 501(c)(3) charitable organization on whose Board of Directors they serve?

### FACTS AND ANALYSIS

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

The Honorable Laura Petro has served as a Circuit Court Judge for the 10<sup>th</sup> Judicial Circuit in Jefferson County since December of 2002. She is a public official as defined by Ala. Code § 36-25-1(27). In addition to serving as a Circuit Court Judge, Judge Petro is a member of the Board of Directors of YWCA Central Alabama, a 501(c)(3) charitable organization. Judge Petro is not compensated for her service to the YWCA Board. Judge Petro was re-elected to the bench in November of 2016. Her principal campaign committee currently has a balance of \$740.97, which she would like to donate to the YWCA. Neither she nor a member of her family would receive any gain from the donation.

Ala. Code § 36-25-6 prohibits the conversion of campaign funds to personal use.

Ala. Code § 17-5-7 allows for excess campaign funds to be given to “an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any other charitable, educational, or eleemosynary cause of Section 501 of Title 26 of the U. S. Code.”

In addition to the above statutes, Advisory Opinion No. 2016-23 (which became final on February 1, 2017) sets out, “The Commission presumes the following expenses not to be for personal use...”

“1. Any permitted use under the FCPA which includes...the following as specifically set out in Ala. Code § 17-5-7:

“[D]onations to an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any other charitable, educational, or eleemosynary cause of Section 501 of Title 26 of the U. S. Code (**unless in doing so the expenditure is converted to personal use by the candidate or officeholder, their family or a business with which they are associated**)." (Emphasis added).

The Code defines “Business” as, “Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or **any other legal entity**.” Ala. Code § 36-25-1(1) (emphasis added). It defines “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.” Ala. Code § 36-25-1(2) (emphasis added). Ala. Code § 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.”

The Commission has stated in the past that nonprofits on whose boards a public official or employee sits are businesses with which they are associated, and the Code’s language supports that conclusion. The Code’s prohibitions, however, must be viewed within the context of the public corruption which the Act is set up to prohibit. This donation, in the context presented here and based on the facts supplied, does not result in the personal gain prohibited by the Act. See also, AO 2016-33.

Therefore, provided neither Judge Petro, nor a member of her family, nor any other businesses with which they are associated receive personal gain from the donation not addressed in this Opinion, it is an allowed use of excess campaign funds under the Fair Campaign Practices Act, and would not be a conversion to personal use by a business she is associated with as referenced in AO 2016-23.

### **CONCLUSION**

Use of Excess Campaign Funds/An elected official may donate excess campaign funds to a 501(c)(3) charitable organization on whose Board of Directors they serve, when the position is non-compensated and neither the public official, nor their family members, nor any other business with which they are associated, receives any personal gain from either the donation or the 501(c)(3).

### **AUTHORITY**

By 4-0 vote of the Alabama Ethics Commission on April 26, 2017.



Jerry L. Fielding, Ret. Sr. Circuit Judge  
Chair  
Alabama Ethics Commission