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March 6, 1996

ADVISORY OPINION NO. 96-30

Mr. Jarrod D. Massey
Executive Director
Choctawhatchee-Pea Rivers
Watershed Management Authority
400 Pell Avenue
Collegeview Building
Troy, Alabama 36082

Lobbyist/Employees And
Board Members Of
Watershed Management
Authority Registering As
Lobbyists.

The Executive Director of the
CPRWMA (Choctawhatchee-
Pea Rivers Watershed
Management Authority) and
the Executive Assistant are
required to register as
lobbyists with the State
Ethics Commission.

The Executive Director of the
CRPWMA and the Executive
Assistant are required to
submit quarterly financial
statements and quarterly
reports summarizing
lobbying activities.

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Members of the board of directors of the CPRWMA are not required to register as lobbyists; therefore, are not required to file quarterly reports.

Members of the legislature that serve as board members on the CPRWMA are not required to register as lobbyists; therefore they are not subject to filing quarterly reports.

Technical advisors who are merely providing technical assistance and are not attempting to influence legislation, are not considered to be lobbyists; and therefore, not required to register and file.

Should local, county, state, and federal officials be acting in a capacity whereby they are attempting to influence legislation, they are lobbyists and are required to register and file reports.

Dear Mr. Massey:

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(a). As employees of the State of Alabama, do the Executive Director of the CPRWMA (Choctawhatchee-Pea Rivers Watershed Management Authority) and the Executive Assistant need to register as lobbyists with the State Ethics Commission?
- 1(b). If these employees are required to register as lobbyists, are they required to submit quarterly financial statements and quarterly reports summarizing lobbying activities?
- 2(a). Do members of the board of directors of the CPRWMA have to register as lobbyists, and if so, are they required to file quarterly reports?
- 2(b). Are members of the legislature that serve as board members on the CPRWMA required to register as lobbyists, and if so, must they file quarterly reports?
3. Are technical advisors required to register as lobbyists, and if so, are they subject to filing quarterly reports?
4. Are local, county, state, and federal officials acting in a capacity on behalf of CPRWMA required to register as lobbyists, and if so, are they required to file quarterly reports?

FACTS AND ANALYSIS

The Choctawhatchee-Pea Rivers Watershed Management Authority currently has two full-time employees that are State employees. They are governed by a Board of Directors comprised of fifteen citizens from within the Watershed area.

The Watershed Management Authority is a State agency responsible for ten southeast Alabama counties.

From the facts as provided, the Watershed Management Authority employees and board members find it necessary to frequently visit with representatives and senators of the legislature in order to make them aware of developments regarding the Authority. The situation often extends itself to involving the solicitation of funds that will be coming out of the general fund appropriations in the annual budget presented to the Legislature.

CPRWMA is also served by numerous technical advisors, who assist the agency from

time to time, as developments dictate the need for their technical assistance. Occasionally, these individuals have communications with representatives and senators in a similar manner to those of agency employees and board members.

The CPRWMA is actively involved with a number of local, county, state, and federal agencies on a daily basis. On many occasions, missions and directives of the CPRWMA and the local county, state, and federal agencies overlap. Frequently, representatives of these agencies have communications with members of the legislature regarding the CPRWMA.

The Alabama Ethics Law, Code of Alabama, Section 36-25-1(17) states:

"(17) LOBBYING. The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body; provided, however, that providing public testimony before a legislative body or regulatory body or any committee thereof shall not be deemed lobbying."

Section 36-25-1(18)(a) states:

"(18) LOBBYIST.

a. The term lobbyist includes any of the following:

- 1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.*
- 2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.*
- 3. A person who expends in excess of one hundred dollars (\$100) for a thing of value, not including funds expended for travel, subsistence expenses, and literature, buttons, stickers, publications, or other acts of free speech, during a calendar year to lobby.*
- 4. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.*

5. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session."

Section 36-25-1(18)(b) states:

"b. The term lobbyist does not include any of the following:

- 1. A member of a legislative body on a matter which involves that person's official duties.*
- 2. A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.*
- 3. Reporters and editors while pursuing normal reportorial and editorial duties.*
- 4. Any citizen not expending funds as set out above in paragraph a.3. or not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a particular issue or on particular legislation, or for the purpose of influencing legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.*
- 5. A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.*
- 6. A person whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess."*

Section 36-25-18 states:

"(a) Every lobbyist shall register by filing a form prescribed by the commission no later than January 31 of each year or within 10 days after the first undertaking requiring such registration. Each lobbyist, except public employees who are lobbyists, shall pay an annual fee of one hundred dollars (\$100) on or before January 31 of each year or within 10 days of the first undertaking requiring such registration.

(b) The registration shall be in writing and shall contain the following information:

(1) The registrant's full name and business address.

(2) The registrant's normal business and address.

(3) The full name and address of the registrant's principal or principals.

(4) The listing of the categories of subject matters on which the registrant is to communicate directly with a member of the legislative body to influence legislation or legislative action.

(5) If a registrant's activity is done on behalf of the members of a group other than a corporation, a categorical disclosure of the number of persons of the group as follows: 1-5; 6-10; 11-25; over 25.

(6) A statement signed by each principal that he or she has read the registration, knows its contents and has authorized the registrant to be a lobbyist in his or her behalf as specified therein, and that no compensation will be paid to the registrant contingent upon passage or defeat of any legislative measure.

(c) A registrant shall file a supplemental registration indicating any substantial change or changes in the information contained in the prior registration within 10 days after the date of the change."

Section 36-25-19 states:

"(a) Every person registered as a lobbyist pursuant to Section 36-25-18 and every principal employing any lobbyist shall file with the commission a report provided by the commission pertaining to the activities set out in that section. The report shall be filed with the commission no later than January 31, April 30, July 31, and October 31 for each preceding calendar quarter, and contain, but not be limited to, the following information:

(1) The cost of those items excluded from the definition of a thing of value which are described in Section 36-25-1(30)b and which are expended within a 24-hour period on a public official, public employee, and members of his or her respective household in excess of two hundred fifty dollars (\$250) with the name or names of the recipient or recipients and the date of the expenditure.

(2) The nature and date of any financial transaction between the public official,

candidate, or member of the household of such public official or candidate and the lobbyist or principal of a value in excess of five hundred dollars (\$500) in the prior quarter, excluding those financial transactions which are required to be reported by candidates under the Fair Campaign Practices Act as provided in Chapter 22A (commencing with Section 17-22A-1) of Title 17.

(3) A detailed statement showing the exact amount of any loan given or promised to a public official, candidate, public official or candidate.

(4) A detailed statement showing any direct business association or partnership with any public official, candidate, or members of the household of such public official or candidate; provided, however, that campaign expenditures shall not be deemed a business association or partnership.

(b) Any person not otherwise deemed a lobbyist pursuant to this chapter who negotiates or attempts to negotiate a contract, sells or attempts to sell goods or services, engages or attempts to engage in a financial transaction with a public official or public employee in their official capacity and who within a calendar day expends in excess of two hundred fifty dollars (\$250) on such public employee, public official, and his or her respective household shall file a detailed quarterly report of the expenditure with the commission.

(c) Any other provision of this chapter to the contrary notwithstanding, no organization whose officer or employee serves as a public official under this chapter shall be required to report expenditures or reimbursement paid to such officer or employee in the performance of the duties with the organization."

The Alabama Ethics Law specifically states that a person is engaging in the activity of lobbying if they are promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body, or are in any manner influencing, or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body.

Once the first threshold is met, and it is determined that a person does fall within the definition of a lobbyist, then the law further requires that the individual file lobbyist registration forms on or before January 31, or within ten days after they undertake lobbying activities. The law further requires that quarterly reports of all lobbying activities be filed with the Ethics Commission. These reports are due no later than January 31, April 30, July 31, and October 31, for each preceding calendar quarter.

In the request for an opinion, it is stated that two of the board members currently serve in

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the legislature for the State of Alabama. Section 36-25-1(18)(b)(1) excludes a member of a legislative body from the definition of a lobbyist on a matter which involves that person's official duties.

Under the facts as presented, if the legislator/board member is merely serving as a legislator and performing the duties of the office held, he is not a lobbyist, and therefore not required to register as a lobbyist or file the required reports.

In the request for an opinion, it is asked whether or not technical advisors who are providing technical assistance are required to register as lobbyists.

Section 36-25-1(18)(b)(2) excludes from the term a lobbyist, a person or attorney rendering professional services, drafting bills, or advising clients in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules and regulations where those professional services are not otherwise connected with legislative, executive, or regulatory action.

If a technical advisor is merely providing technical assistance and is not attempting to influence legislation, he is not considered a lobbyist, and therefore not required to register and file.

However, under the facts as presented to the Ethics Commission, it would appear that the technical advisors spoken of in the request, perform much of the same activities as the board members and the two employees, in that these individuals have communications with representatives and senators in relation to agency activities and the budget.

Should they be attempting to influence legislation, they are lobbyists, therefore required to register and file.

Question number four, asks whether or not local, county, state, and federal agencies appearing on behalf of CPRWMA and acting in that capacity are required to register as lobbyists.

As the prior question has been answered, should these persons be acting in a capacity whereby they are attempting to influence legislation, they are lobbyists and are required to register and file reports.

CONCLUSION

The Executive Director of the CPRWMA (Choctawhatchee-Pea Rivers Watershed

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Management Authority) and the Executive Assistant are required to register as lobbyists with the State Ethics Commission.

The Executive Director of the CRPWMA and the Executive Assistant are required to submit quarterly financial statements and quarterly reports summarizing lobbying activities.

Members of the board of directors of the CPRWMA are not required to register as lobbyists; therefore are not required to file quarterly reports.

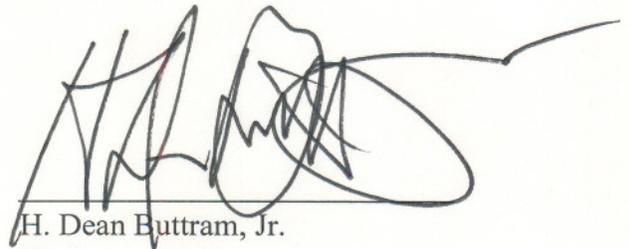
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Should local, county, state, and federal officials be acting in a capacity whereby they are attempting to influence legislation, they are lobbyists and are required to register and file reports.

AUTHORITY

By 4 - 0 vote of the Alabama Ethics Commission on March 6, 1996.

A handwritten signature in black ink, appearing to read 'H. Dean Buttram, Jr.', written over a horizontal line.

H. Dean Buttram, Jr.
Chair
Alabama Ethics Commission