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June 5, 1996

ADVISORY OPINION NO. 96-58

Fred Gainous
Chancellor
Alabama Department of
Postsecondary Education
401 Adams Avenue
Montgomery, Alabama 36104-4340

Lobbyists/Members Of The
State Board Of Education As
Lobbyists.

Lobbyists/Chancellor Of The
Alabama State Board Of
Education As Lobbyist.

Lobbyists/Presidents Of
Institutions Under Authority
Of The Alabama State Board
Of Education As Lobbyists.

Members of the Board of the
Alabama State Board of
Education are not lobbyists,
and are therefore not required
to register as lobbyists with
the Alabama Ethics
Commission.

The Chancellor of the
Alabama State Board of
Education, as a part of his job

responsibilities is a lobbyist, and therefore required to register as a lobbyist with the Alabama Ethics Commission.

Presidents of institutions under the authority of the Alabama State Board of Education are required to register as lobbyists when the exercise of their official duties requires them to consult with members of the legislature, in an effort to attempt to influence legislation.

Dear Mr. Gainous:

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

Does the definition of a lobbyist set forth in Section 36-25-1(18) include members of the Alabama State Board of Education, Presidents of the institutions under its authority, direction and control, and the Chancellor of the Department of Postsecondary Education?

FACTS AND ANALYSIS

The Chancellor of the Department of Postsecondary Education has expressed some concern as to whether or not himself, members of the State Board of Education, and Presidents of the various institutions operating under the authority of the State Board of Education are lobbyists, and therefore required to register with the Ethics Commission.

Sections 16-3-11 and 16-60-111.4, generally set out the powers of the Alabama State Board of Education with respect to the public schools and the two-year colleges of the State of Alabama.

Under Section 16-3-1,1 the board exercises "general control and supervision over the public schools of the State. . . consults with and advises . . . county boards of education, city and town boards of education . . ." as well as other agencies and departments.

Section 16-60-11.4 authorizes the board to make rules and regulations, as well as prescribing the course of study to be offered and conditions for granting diplomas, supervising expenditures of legislative appropriations, and promoting the public interest in two-year colleges in the State of Alabama.

Section 16-60-111.2 makes the Chancellor of the Department of Postsecondary Education responsible "for the operation, management, control, supervision, maintenance, regulation, improvement, and enlargement. . ." of the public two-year colleges within the State of Alabama.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(a) states:

"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."*

The requestor of the opinion states that it would not be possible for either the Chancellor or the members of the Alabama State Board of Education to discharge their statutory responsibilities without consulting the legislators and/or attempting to influence legislation. Failure to do so would most likely be a failure to carry out the legislative mandates of the

previously cited Code Sections.

State Board of Education Policy Number 203.02 relates to the Presidents of the two-year institutions, under the umbrella of the Department of Postsecondary Education, and provides that "each President is responsible to the Chancellor for the day-to-day operations of the college." The exercise of those duties requires the President to consult with members of the legislature and other regulatory agencies, and where needed to attempt to influence legislation.

As the Ethics Commission has held in Opinion 96-30, members of various State boards and commissions while furthering their responsibilities as members of that board or commission, are not lobbying, and are therefore not required to register as lobbyists with the Ethics Commission.

On the other hand, the Chancellor of the two-year education system within the State of Alabama, is required to lobby as a regular and usual part of his employment, and therefore would be required to register as a lobbyist.

Under the same analysis, the President of a two-year college while answering to the Chancellor is likewise required to register as a lobbyist, if as a usual part of his employment he is required to attempt to influence legislation.

CONCLUSION

Members of the Board of the Alabama State Board of Education are not lobbyists, and are therefore not required to register as lobbyists with the Alabama Ethics Commission.

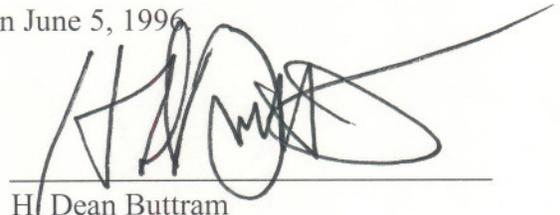
The Chancellor of the Alabama State Board of Education as a part of his job responsibilities is a lobbyist, and therefore required to register as a lobbyist with the Alabama Ethics Commission.

Presidents of institutions under the authority of the Alabama State Board of Education are required to register as lobbyists when the exercise of their official duties requires them to consult with members of the legislature, in an effort to attempt to influence legislation.

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Advisory Opinion No. 96-58
Page five

AUTHORITY

By 4 - 0 vote of the Alabama Ethics Commission on June 5, 1996

A handwritten signature in black ink, appearing to be "H. Dean Buttram", written over a horizontal line. The signature is stylized and somewhat illegible.

H/ Dean Buttram
Chair
Alabama Ethics Commission