



COMMISSIONERS

Camille S. Butrus, Chairman
Helen Shores Lee, Esq., Vice-Chairman
John H. Watson
Lewis G. Odom, Jr., Esq.
Russell Jackson Drake, Esq.

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



James L. Sumner, Jr.
Director

Hugh R. Evans, III
Assistant Director
General Counsel

TELEPHONE (334) 242-2997
FAX (334) 242-0248

April 7, 1999

ADVISORY OPINION NO. 99-16

Thomas H. Mills
502 Elizabeth St. NE
Cullman, Alabama 35055

Personal Gain/Receipt Of A Thing Of Value/Public Officials And Public Employees Soliciting Free Athletic Tickets To Sporting Events Or Other Social Occasions.

Public officials and public employees may not solicit free athletic tickets to sporting events or other social occasions as this would be a use of one's official position or office to obtain personal gain. However, public officials and public employees may accept free athletic tickets to sporting events or other social occasions, when they are offered with no understanding that the tickets are given in exchange for official action, and provided further, that these tickets are not season tickets, which are considered to be a "thing of value" as they are continuous in nature.

Dear Mr. Mills:

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 a public official/public employee solicit free athletic tickets to a sporting event or other social occasion?

FACTS AND ANALYSIS

On September 2, 1998, the Alabama Ethics Commission rendered Advisory Opinion No. 98-47 which held as follows:

“Officers and employees of the Birmingham Parks and Recreation Board may accept tickets to events at Park Board facilities; free parking in the Officials’ Lot at Legion Field; free parking at Birmingham Parking Authority facilities; free access to Board operated facilities; and, free golf at Board operated facilities; provided, that the tickets and free parking are made available to all City officers and employees and are governed by a City policy.”

“The above notwithstanding, officers and employees of the Birmingham Parks and Recreation Board may accept free parking at Birmingham Parking Authority facilities when they are attending official meetings of the Board, or otherwise performing the official functions of their positions.”

“In addition, the policy makers for the City of Birmingham, may not vote or approve the receipt of free parking, etc., for themselves, as this would involve a financial gain to the policy makers.”

The requestor of this opinion has asked for clarification of certain issues regarding that opinion. In his request for an opinion he asks four specific questions; however, in subsequent conversations with the requestor, the sole issue that he is concerned about is whether or not public officials or public employees may solicit tickets from various entities.

There are several Code sections that are applicable in this situation.

Section 36-25-5(a) states:

"(a) 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."

In addition, Section 36-25-5(e) states:

"(e) 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."

Further, Sections 36-25-7(a), (b) & (c) state:

"(a) No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive a thing of value for the purpose of influencing official action.

(b) No public official or public employee shall solicit or receive a thing of value for himself or herself or for a family member of the public employee or family member of the public official for the purpose of influencing official action.

(c) No person shall offer or give a family member of the public official or family member of the public employee a thing of value for the purpose of influencing official action."

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 Alabama Ethics Law, Section 36-25-1(31)(a) defines a "thing of value" as:

"a. Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event offered only to public officials, unsecured loan, other than

those loans made in the ordinary course of business, reward, promise of future employment, or honoraria.”

However, the Ethics Law removes from the definition of a “thing of value” the following subject matters:

Section 36-25-1(31)(b):

“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:

1. Campaign contribution.
2. Seasonal gifts of an insignificant economic value of less than one hundred dollars (\$100) if the aggregate value of such gifts from any single donor is less than two hundred fifty dollars (\$250) during any one calendar year.
3. Hospitality extended to a public official, public employee, and his or her respective household as a social occasion in the form of food and beverages where the provider is present, lodging in the continental United States and Alaska incidental to the social occasion, and tickets to social or sporting events if the hospitality does not extend beyond three consecutive days and is not continuous in nature and the aggregate value of such hospitality in excess of two hundred fifty dollars (\$250) within a calendar day is reported to the commission by the provider provided that the reporting requirement contained in this section shall not apply where the expenditures are made to or on behalf of 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 charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, and where the public official or public employee does not receive any direct financial benefit. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.
4. Reasonable transportation, food and beverages where the provider is present, and lodging expenses in the continental United States and Alaska which are provided in conjunction with an educational or informational purpose, together with any hospitality associated therewith; provided, that such hospitality is less than 50 percent of the time spent at such event, and provided further that if the aggregate value of such transportation, lodging, food, beverages, and any

hospitality provided to such public employee, public official, and his or her respective household is in excess of two hundred fifty dollars (\$250) within a calendar day the total amount expended shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.

5. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence of a public official or public employee in connection with an economic development research or trade mission, or for attendance at a mission or meeting in which he or she is scheduled to meaningfully participate, or regarding matters related to his or her official duties, and for which attendance no reimbursement is made by the state; provided, that any hospitality in the form of entertainment, recreation, or sporting events shall constitute less than 25% of the time spent in connection with the event. If the aggregate value of any such hospitality extended to the public employee, public official, and his or her respective household is in excess of two hundred fifty dollars (\$250) within a calendar day, the total amount expended for that day shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of such expenditures, the date or dates of the expenditure, and the type of expenditure.

6. Promotional items commonly distributed to the general public and food or beverages of a nominal value.”

Clearly, no one may solicit anything from a lobbyist other than a campaign contribution, regardless of whether or not it is a “thing of value.”

The question arises as to when a public official or a public employee requests tickets to a sporting event, whether that ticket becomes a “thing of value” as defined by law.

Clearly, if the request for a ticket or tickets is made in exchange for the promise of influencing official action, it would become a “thing of value” and would violate the Alabama Ethics Law.

Based on the above law and the facts as presented, public officials and public employees may not solicit free athletic tickets to sporting events or other social occasions as this would be a use of one’s official position or office to obtain personal gain. However, public officials and public employees may accept free athletic tickets to sporting events or other social occasions, when they are offered with no understanding that the tickets are given in exchange for official

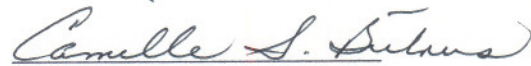
action, and provided further, that these tickets are not season tickets, which are considered to be a "thing of value" as they are continuous in nature.

CONCLUSION

Public officials and public employees may not solicit free athletic tickets to sporting events or other social occasions as this would be a use of one's official position or office to obtain personal gain. However, public officials and public employees may accept free athletic tickets to sporting events or other social occasions, when they are offered with no understanding that the tickets are given in exchange for official action, and provided further, that these tickets are not season tickets, which are considered to be a "thing of value" as they are continuous in nature.

AUTHORITY

By 3-1 vote of the Alabama Ethics Commission on April 7, 1999.



Camille S. Butrus

Chair

Alabama Ethics Commission