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*Reconsidered
on 12-1-99*

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ADVISORY OPINION NO. 99-39

The Honorable Michael D. Rogers
Member
Alabama House of Representatives
District 36
Alabama State House
Montgomery, Alabama 36130

Conflict Of Interests/Member Of Legislature
Raising Money On Behalf Of Party Caucus.

As matters relating to fund-raising, whether for campaign or caucus purposes, are covered by *The Fair Campaign Practices Act*, it is suggested that the requestor of this opinion contact the Attorney General's Office as to the applicability of *The Fair Campaign Practices Act*.

Solicitation Of Donations To Caucus/
Member Of Legislature Soliciting
Contributions For Party Caucus From
Lobbyists.

No public official (including but not limited to a member of the legislature), public employee, or group of public officials or public employees may solicit a lobbyist to contribute to a party caucus, political action committee, non-profit foundation, charitable organization, or any other group, entity or organization, as the Alabama Ethics Law prohibits the solicitation of any lobbyist to give any thing whether or not the thing

solicited is a thing of value for any purpose other than a campaign contribution.

A member of the legislature may not solicit a lobbyist to solicit contributions from other lobbyists, nor may he or she solicit a third party to solicit contributions from a lobbyist, as this would be a subterfuge of the Alabama Ethics Law.

Dear Representative Rogers:

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

Are there any provisions within the Alabama Ethics Act which would govern, limit or in any way affect an agent of a party caucus from fund-raising, soliciting and/or accepting funds on behalf of the House Republican Caucus administrative funds or political action committee?

FACTS AND ANALYSIS

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

Representative Mike Rogers represents the 36th House District for the State of Alabama. He has requested an Advisory Opinion on the solicitation of contributions to a party caucus.

Representative Rogers recognizes that most activities regarding fund-raising fall under *The Fair Campaign Practices Act*. He is interested in determining what, if any, Ethics provisions would still be applicable.

While the fund-raising, itself, falls under *The Fair Campaign Practices Act* and should properly be addressed by the Attorney General's Office, this opinion will limit itself to the use of public time, equipment, human labor, etc., in caucus fund-raising activities and who may be solicited for a contribution.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-5(c) states:

“(c) 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.”

It should be pointed out that a political action committee or a party caucus would not be considered a principal campaign committee for purposes of Section 36-25-5(c). As this area is somewhat gray as relates to other sections of law, it is suggested that the requestor contact the Attorney General’s Office for an opinion relating to the applicability of and any prohibitions contained within *The Fair Campaign Practices Act* regarding this.

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.”

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.**” (Emphasis added.)

The Alabama Ethics Law further provides that a public official or a public employee may not solicit any thing from a lobbyist, regardless of whether or not the thing solicited is a thing of value with the exception of a campaign contribution.

Based on Section 36-25-23(b), a party caucus may not solicit a lobbyist to make a contribution to a party caucus, political action committee, non-profit foundation, charitable organization, or any other group, entity or organization.

It should be pointed out that this solicitation may not be either direct or indirect. In other words, a member of the legislature may not contact a lobbyist and ask that lobbyist to contact other lobbyists for contributions, even if the lobbyist originally contacted by the member of the legislature, does not personally contribute, as this would still be a direct solicitation.

In addition, the solicitations may not be made indirectly. For example, a member of the legislature, or other public official, public employee, or group of public officials or public employees may not contact a private citizen and request that private citizen to solicit contributions for the caucus or political action committee from a lobbyist, as this would be a subterfuge of the Alabama Ethics Law.

CONCLUSION

As matters relating to fund-raising, whether for campaign or caucus purposes, are covered by *The Fair Campaign Practices Act*, it is suggested that the requestor of this opinion contact the Attorney General's Office as to the applicability of *The Fair Campaign Practices Act*.

No public official (including but not limited to a member of the legislature), public employee, or group of public officials or public employees may solicit a lobbyist to contribute to a party caucus, political action committee, non-profit foundation, charitable organization, or any other group, entity or organization, as the Alabama Ethics Law prohibits the solicitation of any

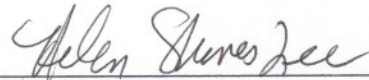
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lobbyist to give any thing whether or not the thing solicited is a thing of value for any purpose other than a campaign contribution.

A member of the legislature may not solicit a lobbyist to solicit contributions from other lobbyists, nor may he or she solicit a third party to solicit contributions from a lobbyist, as this would be a subterfuge of the Alabama Ethics Law.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on October 6, 1999.



Helen Shores Lee
Chair
Alabama Ethics Commission