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September 2, 1998

ADVISORY OPINION NO. 98-47

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Personal Gain/Receipt Of A Thing Of Value/Officers And Employees Of The Birmingham Parks And Recreation Board Accepting Tickets To Events At Park Board Facilities; Free Parking In The Officials' Lot At Legion Field; Free Parking At Birmingham Parking Authority Facilities; Access To Board Operated Facilities At No Cost (Zoo, Vulcan, Botanical Gardens, etc.); Leasing Of Board Facilities; And Playing Golf At No Cost.

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.

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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.

Dear Mr. Pate:

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 officers and employees of the Birmingham Parks and Recreation Board accept tickets to events at Park Board facilities; free parking in the Officials' Lot at Legion Field; free parking at the Birmingham Parking Authority facilities; access to Board operated facilities at no cost (Zoo, Vulcan, Botanical Gardens, etc.); leasing of Board facilities; and playing golf at no cost?

FACTS AND ANALYSIS

The Board of Commissioners of the Birmingham Parks and Recreation Board requests an Advisory Opinion regarding the above referenced questions.

The Alabama Ethics Law, Code of Alabama, Section 36-25-1(24) states:

"PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or

municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2."

"(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

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."

Section 36-25-1(31)(a) defines a thing of value as:

"(31) THING OF VALUE.

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."

On August 13, 1997, the Ethics Commission rendered Advisory Opinion No. 97-71, which held that:

"It would not violate the Alabama Ethics Law for the City of Citronelle to allow Municipal employees and officials, board employees, and volunteer firemen to play

free at the City Golf Course; provided, all City employees and officials are given the same opportunity and it is governed by City policy; and provided further, that the City Council, as policy makers, not vote to allow themselves free use of the golf course during their current term of office, as this would involve a financial gain to themselves, but may vote to allow Council members free use of the golf course effective upon a new Council being seated."

The distinction between Advisory Opinion No. 97-71 and the facts presently before the Ethics Commission, is that the free tickets, etc., are not being offered to all employees of the City of Birmingham, but only to certain officers and employees of the Birmingham Parks and Recreation Board.

Should the City of Birmingham, however, establish a policy, making the free tickets, etc., available to all employees of the City of Birmingham, the receipt thereof, would not violate the Alabama Ethics Law. However, those individuals in policy making positions may not approve a policy, whereby they receive the free benefit themselves.

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.

It should be noted that even those items that may be accepted under these exceptions to the definition of a thing of value, may not be offered or accepted, if there is any understanding that the hospitality will be in exchange for official action.

CONCLUSION

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.

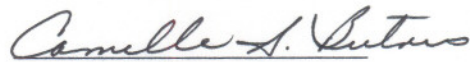
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In addition, the policy makers for the City of Birmingham, may not vote or approve the receipt of free parking, etc., for themselves, as this would involve a financial gain to the policy makers.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on September 2, 1998.



Camille S. Butrus

Chair

Alabama Ethics Commission