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ADVISORY OPINION NO. 2019-06

Mr. Maxwell H. Pulliam
301 North 19th Street
Birmingham, Alabama 35203

Use of Office for Personal Gain/Nonprofit Fundraising

Public officials, public employees, or family members of either who serve on the board of a 501(c)(3) organization but receive no compensation or personal gain from the nonprofit, and neither does a business with which they are associated, can fundraise for the nonprofit, including from businesses or individuals who may be considered principals. No public official or public employee can use official resources or personnel to aid in fundraising. Ala. Code § 36-25-5(c). No contribution can be converted to the personal use of the official or employee or their family member. The contribution cannot benefit the public official, the public employee, their family or a business with which they are associated. Ala. Code § 36-25-5(a). No public official, public employee or group of public officials or public employees can solicit contributions from a lobbyist. Ala. Code § 36-25-23(c). Finally, nothing can be solicited or accepted for the purpose of corruptly influencing any public official or employee's official actions. Ala. Code § 36-25-7. This guidance does not apply to, and the Commission takes no position in this Opinion, on the issue of fundraising for nonprofits that bear the name

of the public official or employee. Any request for guidance in that context should be requested separately.

Dear Mr. Pulliam

The Alabama Ethics Commission is in receipt of your request for a formal Advisory Opinion of this Commission on behalf of the Alabama Association of Nonprofits and this opinion is issued pursuant to that request.

FACTS

The Alabama Association of Nonprofits (“AAN”) is submitting this request for an advisory opinion regarding ethics issues that could affect the ability of certain nonprofit organizations across the state to fundraise and solicit donations that enable them to fulfill their missions, and to recruit and retain board members who will help support their organizations. Since its formation in 1996, AAN has served as the voice for Alabama’s nonprofit sector. AAN is a statewide membership organization representing almost 500 nonprofit organizations and is dedicated to uniting and serving Alabama’s nonprofit sector. Their diverse group of members enrich the lives of the people in their communities in a variety of ways by recreating a broad array of societal benefits in fields such as religion, science, economy, health, arts and culture, civil rights, environment, and education. AAN serves its members by providing professional development, advocacy and public policy development, education and training services and other nonprofit development activities.

Many routine nonprofit fundraising activities are affected by guidance the Commission may provide. Since 2016, the Commission has issued a number of opinions to various entities applying the “permissible if no compensation/personal gain” approach with respect to public officials or employees who serve on the boards of nonprofits, but AAN requests guidance specifically for its members.

QUESTION PRESENTED

1. If a public official, public employee, or family member of either serves on a 501(c)(3)’s board, but receives no compensation or personal gain from the nonprofit, what are the limits on who the public official, public employee, or family member of either Person can fundraise from?

ANALYSIS

The Commission cannot issue an Advisory Opinion covering all 500 members of AAN because the facts related to each nonprofit member may differ. What the Commission can do is

issue general guidance on fundraising by 501(c)(3) organizations. Beginning with Advisory Opinion 2016-29, the Commission has issued seven Advisory Opinions related to 501(c)(3) organizations. Two opinions were related to the obligations placed on businesses that are “principals” and the due diligence required of them in relation to charitable giving. See Advisory Opinions 2016-29 (Matt Bowden) and 2017-08 (Deborah Long). Those opinions were limited in application to those two requestors because their facts were unique given the size of each principal and the resulting challenges each had with respect to monitoring compliance. The Commission issued an opinion to the Mayor of Montgomery, Alabama, Todd Strange, and stated that the Mayor or a member of the City Council who sits on a volunteer board could vote on the City’s budget that included allocations to that board, provided neither the Mayor nor Council members nor their family members are compensated for their service on that board, or otherwise personally benefit, and the allocation is made to serve a public purpose. AO 2016-33.

The Commission issued two opinions to public officials related to their use of excess campaign funds. These opinions were not limited in application to those requestors, but were outside the facts contained in AAN’s request. See AO2017-02 (Parchman) and AO2017-04 (Petro). We issued one opinion to a member of a city council whose employer was a nonprofit, and in that opinion provided guidance as to how that public official could avoid conflicts of interest. See AO 2017-01. Finally, we issued an opinion to the University of West Alabama which advised its Board of Trustees related to the establishment of a Charter School. See AO2017-12 (Kendrick). Opinions of the Commission may be relied upon by “any other person reasonably relying, in good faith, on the advisory opinion in a materially like circumstance from liability of any kind because of any action performed or action refrained from in reliance of the advisory opinion.” Ala. Code § 36-25-4.

501(c)(3) organizations are “businesses” under the Ethics laws and membership on a board of a nonprofit makes it a “business with which the person is associated.”¹ No public official or public employee can use their official position to benefit themselves, their family, or any business with which they are associated. Ala. Code § 36-25-5. Recognizing that the purpose of the Ethics laws is to prevent corruption, and that public officials and employees voluntarily serve many nonprofits for the purpose of improving their communities, we have recognized that nonprofits from which neither the public official nor their family, nor any business with which they are associated receives any gain, including income, pose a low risk of corruption. The Ethics laws’ prohibitions must be viewed within the context of the public corruption which the Act is intended to prohibit. See AO 2017-04. The risk of corruption increases when the official or family member is compensated for service on a board. Likewise, when a nonprofit bears the name of a public official or employee, there is such a close

¹ BUSINESS. Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity.

BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business.

connection with the public servant that fundraising for those nonprofits should be examined on a case-by-case basis.

Under the facts provided, neither the public official, public employee nor family member derives any benefit from the contribution. Therefore, under these facts public officials, public employees, or family members of either who serve on a 501(c)(3)'s board but receive no compensation or personal gain from the nonprofit or from the contribution itself, and neither does a business with which they are associated, can fundraise for the nonprofit, including from businesses or individuals who may be considered principals without violating Ala. Code §36-25-5.1(a). No public official or public employee can use official resources or personnel to aid in fundraising. Ala. Code § 36-25-5(c). No contribution can be converted to the personal use of the official or employee or their family member. The contribution cannot benefit a business with which the official or employee is associated. Ala. Code § 36-25-5(a). No public official, public employee or group of public officials or public employees can solicit contributions from a lobbyist because a lobbyist can only be solicited for campaign contributions. Ala. Code § 36-25-23(c).² Nothing can be solicited or accepted for the purpose of corruptly influencing any public official or employee's official actions. Ala. Code § 36-25-7. This guidance does not apply to, and the Commission takes no position in this Opinion, on the issue of fundraising for nonprofits that bear the name of the public official or employee. Any request for guidance in that context should be requested separately.

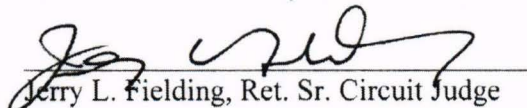
CONCLUSION

Public officials, public employees, or family members of either who serve on the board of a 501(c)(3) organization but receive no compensation or personal gain from the nonprofit, and neither does a business with which they are associated, can fundraise for the nonprofit, including from businesses or individuals who may be considered principals. No public official or public employee can use official resources or personnel to aid in fundraising. Ala. Code § 36-25-5(c). No contribution can be converted to the personal use of the official or employee or their family member. The contribution cannot benefit the public official, the public employee, their family or a business with which they are associated. Ala. Code § 36-25-5(a). No public official, public employee or group of public officials or public employees can solicit contributions from a lobbyist. Ala. Code § 36-25-23(c). Finally, nothing can be solicited or accepted for the purpose of corruptly influencing any public official or employee's official actions. Ala. Code § 36-25-7. This guidance does not apply to, and the Commission takes no position in this Opinion, on the issue of fundraising for nonprofits that bear the name of the public official or employee. Any request for guidance in that context should be requested separately.

² Although the class of people covered by section 23(c) is limited, Ala. Code § 13A-1-7(b) makes the Criminal Code of Alabama apply to violations of this Chapter, including complicity. See Ala. Code § 13A-2-23.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on February 6, 2019.


Jerry L. Fielding, Ret. Sr. Circuit Judge
Chair
Ethics Commission