



STATE OF ALABAMA ETHICS COMMISSION



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August 4, 2021

ADVISORY OPINION NO. 2021-06

Raymond Bell
On Behalf of Kevin Ball
11 North Water Street,
Suite 24290
Mobile, AL 36602

Conflict of Interest/Personal Gain/Thing of Value/Solicitation/Lobbyists and Principals/University Board of Trustees

A member of the Alabama A&M University Board of Trustees may use his private position to benefit Alabama A&M University.

An appointed member of the Board of Trustees for Alabama A&M University may not solicit anything from a lobbyist other than a campaign contribution.

An appointed member of the Board of Trustees for Alabama A&M University may not solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or a principal.

Dear Mr. Bell:

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.

FACTS

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

Kevin Ball is a member of the Board of Trustees of Alabama A & M University (AA&M). Mr. Ball is interested in starting an annual Historically Black College and University football bowl game to be permanently hosted within the City of Mobile, Alabama. If permissible, Mr. Ball would like to serve as the chief executive of the entity that will be responsible for the bowl game and related events and functions (the “events”) including the day-to-day operations of the entity, which will also hold all rights and interests in the events.

The football game will be a matchup against one team from both the Southern Intercollegiate Athletic Conference (SIAC) and the Southwestern Athletic Conference (SWAC). The teams that will participate in the annual game will be selected by a board of five members according to various factors, which will include scheduling, cost, expected fan and spectatorship participation, and other criteria to be determined. Each school will be paid a participation fee.

The entity that will be responsible for the events will be responsible for paying for and/or securing the venue, covering the participation fees for each school and other expenses related to the events. Anticipated revenue will include investments from the responsible entity, sponsorships, ticket sales, and contributions. The responsible entity will suffer any losses and be entitled to any profits.

QUESTIONS PRESENTED

May a member of a Board of Trustees of an Alabama university own or have an interest in an entity that will facilitate, manage and operate an annual football bowl game and related events?

If the response to the foregoing is yes, may the trustee participate in the selection process for the participating teams?

If the response to the foregoing is yes, may the trustee participate in the selection process for the participating teams if one of the contending teams is from the SWAC?

If the response to the foregoing is yes, may the trustee participate in the selection process for the participating teams if one of the contending teams is AA&M?

Lastly, may the trustee, a public official, solicit for sponsorships and other funding for an entity he owns or has an interest in an entity that will facilitate, manage and operate an annual football bowl game and related events?

ANALYSIS

Mr. Ball is a public official by virtue of his appointment to the AA&M Board of Trustees by the Governor.¹ A cornerstone of the Ethics Act is that qualified men and women be encouraged to serve in government as articulated in Ala. Code § 36-25-2(b):

It is also essential to the proper operation of government that those best qualified be encouraged to serve in government. Accordingly, legal safeguards against conflicts of interest shall be so designed as not to unnecessarily or unreasonably impede the service of those men and women who are elected or appointed to do so. An essential principal underlying our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interest, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.

The Ethics Act would not prohibit Mr. Ball from owning or having an interest in an entity that will facilitate, manage, and operate an annual football game or related events. Mr. Ball is prohibited from using his position for personal gain for himself, a family member, or a business with which he is associated.² Mr. Ball is also prohibited from soliciting or receiving anything for the purpose of corruptly influencing his official action.³ The entity that Mr. Ball has an interest in owning to facilitate the games would be a business with which he is associated. Therefore, he cannot use his public position as a member of the AA&M Board to benefit that business.

The Ethics Act does not prohibit Mr. Ball from using his private position for the benefit of a public entity. If Mr. Ball owns or obtains an interest in an entity that will facilitate, manage, and operate an annual football game or related events, the Ethics Act would not prohibit him from participating in a selection process for the participating teams, including AA&M, or paying AA&M a participation fee for participating in the bowl game.

As a public official, Mr. Ball may not solicit anything from a lobbyist other than a campaign

¹ Ala. Code § 36-25-1(27): 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 17-13-40. See also Ala. Code § 16-49-20; Riley v. Hughes, 17 So.3d 643 (Ala. 2009); and Ethics Advisory Opinion Nos. 2008-22 & 2017-03.

² Ala. Code § 36-25-5(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.

³ Ala. Code § 36-25-7(b): No public official or public employee shall solicit or receive anything for himself or herself or for a family member of the public employee or family member of the public official for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

contribution.⁴ Therefore, Mr. Ball must avoid soliciting any lobbyist for a sponsorship or any other type of funding for his proposed private entity and its events.

Mr. Ball may also not solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal.⁵ There are several exceptions to what the Ethics Act considers to be a “thing of value.”⁶ Should the opportunity arise to receive a sponsorship from a lobbyist or a principal, he should contact the Commission for further guidance about whether an exception to a “thing of value” will be applicable.

CONCLUSION

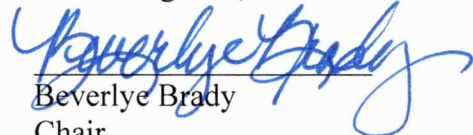
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AUTHORITY

By 50 vote of the Alabama Ethics Commission on August 4, 2021.



Beverlye Brady
Chair

Alabama Ethics Commission

⁴ Ala. Code § 36-25-23(c): 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.

⁵ Ala. Code § 36-25-5.1(a): No lobbyist, subordinate of a lobbyist, or principal shall offer or provide a thing of value to a public employee or public official or to a family member of the public employee or family member of the public official; and no public employee or public official or family member of the public employee or family member of the public official shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal. Notwithstanding the foregoing, a lobbyist, or principal may offer or provide and a public official, public employee, or candidate may solicit or receive items of de minimis value.

Ala. Code § 36-25-1(34) THING OF VALUE. (a): Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event, unsecured loan, other than those loans and forbearances made in the ordinary course of business, reward, promise of future employment, or honoraria or other item of monetary value.

⁶ See Ala. Code § 36-25-1(34)(b).