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March 5, 2003

**ADVISORY OPINION NO. 2003-16**

The Honorable Vivian Davis Figures  
Alabama State Senate  
33<sup>rd</sup> District  
Post Office Box 40536  
Mobile, Alabama 36640

Conflict Of Interest/Member Of Alabama  
Senate Serving As President And CEO Of  
Non-Profit Organization

A member of the Alabama Senate may serve as President and CEO of the Michael A. Figures Legacy Education Fund, a non-profit organization, provided, she not be involved in fund-raising activities on behalf of the organization, as her fund-raising activities could involve making solicitations from lobbyists and other individuals with matters pending before the Legislature.

Dear Senator Figures:

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 member of the Alabama State Senate solicit funds on behalf of a non-profit organization?

### FACTS AND ANALYSIS

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

Vivian Davis Figures is a member of the Alabama Senate. She has established the Michael A. Figures Legacy Education Fund, which is a non-profit organization that develops and implements programs to assist families with children to excel in education. One of her responsibilities as President and CEO is to raise the necessary funds in order to operate the various programs. She has asked for an Advisory Opinion on this scenario.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24) defines a public official as:

"(24) 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."

Section 36-25-1(8) defines a conflict of interest as:

"(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs."

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 36-25-23(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."

On February 5, 2003, the Commission rendered Advisory Opinion No. 2003-09, which states:

"A member of the Alabama Senate may continue to serve as President and CEO of the Save America Foundation, a 501(c) non-profit organization; however, he may not be involved in fund-raising activities on behalf of the organization, as his fund-raising activities could involve making solicitations from lobbyists and other individuals with matters pending before the Legislature."

It would be virtually impossible to separate Senator Figures' persona as a member of the Senate and her persona as President of the Foundation. Regardless of the context in which she is making a solicitation, she would be perceived as a member of the Alabama Senate.

Based on the facts as presented and the above law, a member of the Alabama Senate may serve as President and CEO of the Michael A. Figures Legacy Education Fund, a non-profit organization, provided, she not be involved in fund-raising activities on behalf of the organization, as her fund-raising activities could involve making solicitations from lobbyists and other individuals with matters pending before the Legislature.

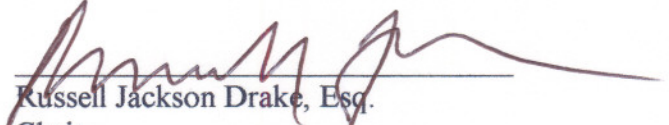
### CONCLUSION

A member of the Alabama Senate may serve as President and CEO of the Michael A. Figures Legacy Education Fund, a non-profit organization, provided, she not be involved in fund-raising activities on behalf of the organization, as her fund-raising activities could involve making solicitations from lobbyists and other individuals with matters pending before the Legislature.

The Honorable Vivian Davis Figures  
Advisory Opinion No. 2003-16  
Page four

**AUTHORITY**

By 4-1 vote of the Alabama Ethics Commission on March 5, 2003.

A handwritten signature in dark ink, appearing to read "Russell Jackson Drake", written over a horizontal line.

Russell Jackson Drake, Esq.  
Chair  
Alabama Ethics Commission