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August 6, 2008

ADVISORY OPINION NO. 2008-17

Mr. Gene Hallman, Jr.
Alabama Sports Foundation, Inc.
President
Bruno Event Team
Bruno Capitol Building
100 Grandview Place
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Birmingham, Alabama 35243

Reporting Requirements/Hospitality Provisions Under The Ethics Law

Hospitality, where the expenditure is made to, or on behalf of, the Alabama Sports Foundation, Inc., a 501(c)(3) organization to which a federal income tax deduction is permitted under Section 170 of the Internal Revenue Code of 1986, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, does not have to be reported under the reporting requirements of Section 36-25-1(31)(b)(3); provided, that the public official or public employee does not receive any direct financial benefit, and the expenditure is legitimately made to, or on behalf of, the charitable organization.

In addition, while the hospitality provided under this Section is exempt from the reporting requirements of the Ethics Law, it may not last longer than three days and may not otherwise be continuous in nature.

Mr. Gene Hallman, Jr.
Advisory Opinion No. 2008-17
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Dear Mr. Hallman:

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

Does hospitality provided to public officials or public employees either by, or on behalf of, the Alabama Sports Foundation, Inc., a tax exempt charitable foundation, have to be reported under Section 36-25-1(31)(b)(3) of the Alabama Ethics Law?

FACTS AND ANALYSIS

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

The Alabama Sports Foundation (the "Foundation") is a tax-exempt charitable foundation organized under Alabama law and qualified under §501(c)(3) of the Internal Revenue Code of 1986, contributions to which are deductible under § 170(A)(1)(b) of the Internal Revenue Code. The primary purpose of the Foundation is to foster and support amateur athletic competition in accordance with § 501(c)(3). Included among the many events that the Foundation has sponsored in the State of Alabama during the past several years are U.S. Men's and Women's National Soccer matches, Olympic Marathon Trials, NCAA Men's Basketball Regionals, the Magic City Classic and the Southeastern Conference Baseball Tournament. They are seeking an Advisory Opinion from the Commission regarding the application of the reporting requirements under Section 36-25-1(31)(b)(3) of the Alabama Code to the participation by public employees and public officials in certain of the activities of the Magic City Classic as described below.

The Magic City Classic is the state's premiere African-American College Football game. The game features Alabama State University and Alabama A & M University, which are the two largest historically predominantly African-American universities in the state of Alabama. Both schools have long histories of tradition. Alabama A & M and Alabama State Universities first played football against each other in 1924. The game was moved to Birmingham's Legion Field in 1940, and has been played there on an annual basis since that date as the Magic City Classic. Since 2007, the game has been conducted by the Foundation under an agreement with the two universities. Attendance was 68,593 for the 2007 game, making it the largest football classic of its type in the country. The two universities are the primary beneficiaries of the proceeds from the football game and all related activities each year, with the Foundation distributing 80% of the net proceeds to the two universities. A significant amount of the revenue raised by the Foundation from The Magic City Classic comes from school alumni and the business community

which support the game by purchasing tickets to the game and by purchasing various other rights and privileges to participate in pre-game activities and hospitality activities during the week of the game ("Foundation Supporters").

During the week preceding the Magic City Classic, the Foundation sponsors several pre-game activities in which the students and Foundation Supporters are invited to participate, including a kickoff luncheon, a pep rally, a team luncheon and a reception. Separate admission tickets with a value of \$50 each are required for admission to each of these pre-game activities.

At the game itself, the private suites at Legion Field (the "Hospitality Suites") are made available at a cost of \$6,500 to Foundation Supporters who wish to acquire the exclusive use of a suite to entertain guests during the game. Each Hospitality Suite seats 28 persons for the game. The Foundation provides food and beverages in each Hospitality Suite for the invited guests of the Hospitality Suite owner, the cost of which is included in the \$6,500 charged for the Hospitality Suite.

In addition, the Foundation itself operates the large skybox at Legion Field during the game (the "AB Club Skybox"). The AB Club Skybox has a capacity of approximately 400 persons. The Foundation provides food and beverage for persons admitted to the AB Club Skybox. Admission tickets to the AB Club Skybox are purchased for \$200 each by Foundation Supporters for their own personal use and for the purpose of entertaining their employees, customers and other guests during the game. The Hospitality Suites and the AB Club Skybox provide a format for the staff and representatives of the Foundation and for Foundation Supporters to entertain friends and associates during the game.

Admission privileges to the Hospitality Suites and the AB Club Skybox do not include game admission. Game tickets, which cost \$20 each, are required for admission to the stadium itself for any guest invited to a Hospitality Suite or to the AB Club Skybox.

There are occasions when a Foundation Supporter who acquires the use of a Hospitality Suite may desire to invite to the Hospitality Suite a person defined as a public employee or public official by Section 36-25-1 of the Alabama Code, along with the spouse or guest of that public employee or public official. There are occasions when a Foundation Supporter, which acquires AB Club Skybox passes may desire to offer one of those passes to such a public employee or public official and to the spouse or guest of that public employee or public official. There are also occasions when the Foundation itself may desire to offer an AB Club Skybox pass to a public employee or public official and to the spouse or guest of that public employee or public official.

In addition, there are occasions when public employees or public officials, along with a spouse or guest are provided complimentary game tickets and admission to the pre-game kickoff luncheon, pep rally, team luncheon and reception. Some of the same public employees and public officials who are provided complimentary access to those pre-game activities and game tickets may also be provided complimentary access to a Hospitality Suite or AB Club Skybox by a Foundation Supporter or by the Foundation.

Alabama Code Section 36-25 generally imposes specific restrictions and prohibitions on the receipt by and offer to public officials and public employees of any "thing of value" as that term is defined in the Code. Section 36-25-1(31)(b)(3) provides an exception under permitted circumstances to the definition of a "thing of value" for hospitality provided to public officials and public employees. That section reads as follows:

"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.**" (Emphasis added).

The amounts paid to the Foundation by Foundation Supporters for these benefits are not necessarily based on the underlying cost of the benefits or the actual market value of the benefits, but are significantly derived from the motivation and desire of the Foundation Supporters to support the charitable and civic purposes of the Foundation. However, it is assumed that the actual price paid to the Foundation by Foundation Supporters for these benefits is their value for the purposes of Section 36-25-1(31)(b)(3).

In view of the fact that each Hospitality Suite, which has a capacity of 28 persons, bears a cost of \$6,500 to the Foundation Supporter, the per person value of admission to a Hospitality

Suite would be approximately \$233. Consequently, the value of admission to the Hospitality Suite for a public official or public employee and a spouse or other guest of the public official or public employee combined would be approximately \$466, which would exceed the \$250 threshold described in Alabama Code Section 36-25-1(31)(b)(3). Similarly, where a public official or public employee and the spouse or other guest of the public official or public employee are both provided with two AB Club Skybox passes, which have a cost of \$200 each, the combined value of \$400 exceeds \$250. In addition, when public employees or public officials, together with their spouses or other guests, are provided with admission tickets to the game and to certain of the pre-game activities, the combined value of all benefits received may exceed \$250.

As set forth above, Alabama Code § 36-25-1(31)(b)(3) provides that the reporting requirement in that section does not apply when permitted hospitality is provided to a public official/employee where the expenditures are made to or on behalf of a Section 501(c)(3) organization, so long as the public official/employee does not receive “any direct financial benefit.” In the above-described circumstances, it would appear that (1) the Foundation and the Foundation Supporters would be providing “hospitality,” as that term is defined in § 36-25-1(31)(b)(3), to public officials and to public employees where the provider is present; (2) public officials/employees who attend would receive only permitted hospitality (admission to social and sporting events along with food and beverages) and would not receive direct financial benefit; and (3) the expenditures are being made to or on behalf of the Foundation which is a 501(c)(3) organization, contributions to which are deductible under Internal Revenue Code § 170(c)(1)(A). Accordingly, the Foundation requests from the Commission an Advisory Opinion clarifying whether the Foundation or the Foundation Supporters would have a reporting obligation under Section 36-25-1(31)(b)(3) when the Foundation or a Foundation Supporter provides a public official/employee with the above-described benefits that have a value of more than \$250.

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(12) defines a family member of the public official as:

“(12) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official.”

Section 36-25-1(23) defines a public employee as:

“(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 36-25-1(11) defines a family member of a public employee as:

“(11) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the public employee.”

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.”

Section 36-25-1(31)(b) defines what the term, thing of value, excludes:

“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.”

In December of 2007, the Commission rendered Advisory Opinion No. 2007-22, which held:

“Hospitality, where the expenditure is made to, or on behalf of, the Birmingham Zoo or any other organization to which a federal income tax deduction is permitted under Section 170 of the Internal Revenue Code of 1986, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, does not have to be reported under the reporting requirements of Section 36-25-1(31)(b)(3); provided, that the public official or public employee does not receive any direct financial benefit, and the expenditure is legitimately made to, or on behalf of, the charitable organization.”

Based on the facts as provided and the above law, hospitality, where the expenditure is made to, or on behalf of, the Alabama Sports Foundation, Inc., a 501(c)(3) organization to which a federal income tax deduction is permitted under Section 170 of the Internal Revenue Code of 1986, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, does not have to be reported under the reporting requirements of Section 36-25-1(31)(b)(3); provided, that the public official or public employee does not receive any direct

financial benefit, and the expenditure is legitimately made to, or on behalf of, the charitable organization.

In addition, while the hospitality provided under this Section is exempt from the reporting requirements of the Ethics Law, it may not last longer than three days and may not otherwise be continuous in nature.

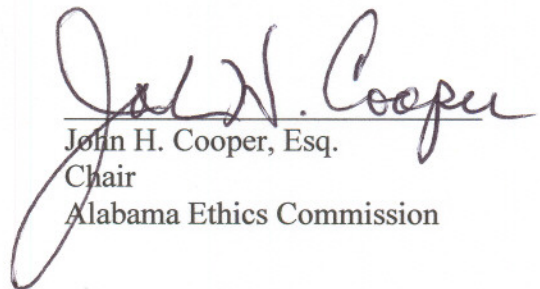
CONCLUSION

Hospitality, where the expenditure is made to, or on behalf of, the Alabama Sports Foundation, Inc., a 501(c)(3) organization to which a federal income tax deduction is permitted under Section 170 of the Internal Revenue Code of 1986, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, does not have to be reported under the reporting requirements of Section 36-25-1(31)(b)(3); provided, that the public official or public employee does not receive any direct financial benefit, and the expenditure is legitimately made to, or on behalf of, the charitable organization.

In addition, while the hospitality provided under this Section is exempt from the reporting requirements of the Ethics Law, it may not last longer than three days and may not otherwise be continuous in nature.

AUTHORITY

By 4-0-1 vote of the Alabama Ethics Commission on August 6, 2008.


John H. Cooper, Esq.
Chair
Alabama Ethics Commission