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August 6, 2008

**ADVISORY OPINION NO. 2008-23**

Mr. John R. Wible  
General Counsel  
State of Alabama  
Department of Public Health  
The RSA Tower  
201 Monroe Street  
Montgomery, Alabama 36104

Use Of Office For Personal Gain/  
Department Of Public Health Employees  
Accepting Cash Awards From The Alabama  
Public Health Association (ALPHA)

Employees of the Alabama Department of  
Public Health may accept cash awards from  
the Alabama Public Health Association;  
provided, that the Department of Public  
Health has a policy in place allowing the  
program.

Dear Mr. Wible:

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 employees of the Alabama Department of Public Health accept cash awards from the Alabama Public Health Association?

### FACTS AND ANALYSIS

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

John R. Wible is General Counsel for the Department of Public Health. The Department seeks an opinion as to whether or not Public Health employees may accept cash awards from the Alabama Public Health Association (ALPHA) without violating the Alabama Ethics Law.

ALPHA is an association of individuals and organizations interested in public health in Alabama. The stated mission of ALPHA is:

- 1) to link individuals and organizations in addressing public health issues;
- 2) to advocate public health policy;
- 3) to support the education of its members and the public on public health issues;  
and
- 4) to enhance the ability of its members to promote and protect personal, environmental and community health.

Several employees of the Department of Public Health are members of ALPHA.

ALPHA provides five yearly awards.

- 1) The D. G. Gill Award to honor an individual who has made an exceptional contribution to public health in Alabama.
- 2) The Guy M. Tate Award, which is presented to a Public Health employee, group (division or discipline), or agency with ten years or less in public health for outstanding current or recent service or contribution to public health.
- 3) The Virginia Kendrick Award, which is presented to an individual who has provided notable service to the people of Alabama, while serving in a supportive position in the field of public health.
- 4) The Frederick S. Wolf Award to recognize an individual who has been active in public health at the local level for more than ten years, who has demonstrated efficiency, dedication and professionalism in delivery of public health services, and who has provided unselfish community services in areas unrelated to public health.
- 5) The Ira L. Myers Award for Excellence was established to honor Dr. Myers for his accomplishments by recognizing an individual, group, or organization who or which, through excellence in work has made a significant impact on some aspect of public health in Alabama and who or which represents excellence in effort and a significant achievement toward the promotion and protection of public health.

The recipient of the Guy M. Tate award receives a \$100 cash prize, and ALPHA is currently considering providing cash prizes to all its award recipients.

The Alabama Ethics Law, Code of Alabama, 1975, 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 36-25-5(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 36-25-5(c) states:

“(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy.”

Section 36-25-1(8) states:

“(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 36-25-2(a) states:

“(a) The Legislature hereby finds and declares:

(3) No public office should be used for private gain other than the remuneration provided by law. ”

Generally, the Commission will not render an Advisory Opinion that is not prospective in nature. In the facts before the Commission, however, four of the five prizes awarded currently do not offer cash awards. This opinion will address those four awards, where no cash prize is currently offered. In addition, this issue may be of interest to other state agencies who have similar situations.

For example, while the Ethics Law prohibits the use of office for personal gain, it does provide for certain exceptions, when there is an agency policy in place controlling the activity. On December 18, 1996, the Commission rendered Advisory Opinion No. 96-121, which stated that:

“A High School Coach may not receive a salary supplement in the form of cash or anything else of value from a Booster Club or other group, in addition to salary or supplements paid by the Board of Education, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy.”

In that opinion, the Commission stated that it was permissible for a coach to accept a salary supplement, provided the Board of Education had a policy, and that monies in the form of a pay supplement were paid through the Board of Education and not directly to the coach to enable the Board of Education to keep control over extras being provided to their employees.

Mr. Wible cites Advisory Opinion No. 97-29, which stated that:

“A Circuit Judge, who is the recipient of The John F. Kennedy Profile in Courage Award, may not personally retain a twenty-five thousand dollar (\$25,000) stipend (honorarium) given in conjunction with that award.”

This opinion is distinguishable, in that in Advisory Opinion No. 97-29, the award was directly related to the Judge's job performance, i.e., a specific act regarding a specific matter pending in his court. The facts before the Commission are distinguishable in that these awards are intended to recognize individuals generally for their contributions to the field of public health, and are not related to a specific action performed by the employee in the performance of his or her job responsibilities.

Mr. Wible also cites Attorney General Opinion No. 2001-088, which states that:

"Based on the language in Section 11-40-22 of the Code, the City may give cash or non-cash awards to employees only for exemplary service or innovations that significantly reduced costs or result in outstanding improvements in services to the public."

The Attorney General's opinion is more directly on point with the facts before the Commission.

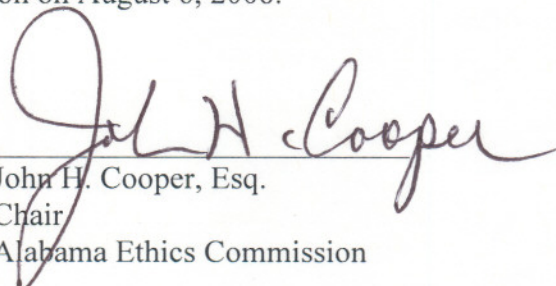
Based on the facts as provided and the above law, employees of the Alabama Department of Public Health may accept cash awards from the Alabama Public Health Association; provided, that the Department of Public Health has a policy in place allowing the program.

### CONCLUSION

Employees of the Alabama Department of Public Health may accept cash awards from the Alabama Public Health Association; provided, that the Department of Public Health has a policy in place allowing the program.

### AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on August 6, 2008.

  
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John H. Cooper, Esq.  
Chair  
Alabama Ethics Commission