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April 17, 1996

## ADVISORY OPINION NO. 96-40

Mr. E. J. "Mac" McArthur  
Director  
Alabama Ethics Commission  
Post Office Box 4840  
Montgomery, Alabama 36103-4840

The Governor of the State of Alabama, as an elected official, required to submit budgets and legislation to the Alabama Legislature, is performing the official duties of his office, and is not required to register as a lobbyist with the Alabama Ethics Commission.

The Governor's Legislative Liaison, Fiscal Officer, Finance Director, and Legal Advisor serve in an advisory/representative capacity and serve as an extension of the Governor and are therefore not required to register as lobbyists.

Dear Mr. McArthur:

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

1. As a constitutional officer, is the Governor of the State of Alabama required to register as a lobbyist?
2. Are members of the Governor's staff required to register as lobbyists?

### FACTS AND ANALYSIS

Since the Ethics Law was amended in 1995 and went into effect in October of the same year, there has been much confusion as to who is and who is not a lobbyist.

This question has arisen in regard to the Governor of the State of Alabama, as well as certain members of his staff.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(17) states:

*"(17) LOBBYING. The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body; provided, however, that providing public testimony before a legislative body or regulatory body or any committee thereof shall not be deemed lobbying."*

Section 36-25-1(18) states:

*"(18) LOBBYIST.*

*a. The term lobbyist includes any of the following:*

- 1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.*
- 2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.*

3. *A person who expends in excess of one hundred dollars (\$100) for a thing of value, not including funds expended for travel, subsistence expenses, and literature, buttons, stickers, publications, or other acts of free speech, during a calendar year to lobby.*

4. *A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.*

5. *An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.*

b. *The term lobbyist does not include any of the following:*

1. *A member of a legislative body on a matter which involves that person's official duties.*

2. *A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.*

3. *Reporters and editors while pursuing normal reportorial and editorial duties.*

4. *Any citizen not expending funds as set out above in paragraph a.3. or not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a particular issue or on particular legislation, or for the purpose of influencing legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.*

5. *A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.*

6. *A person whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess."*

The Governor of the State of Alabama is in the unique position that the duties of his office require him by law to perform certain acts. For example, Article V, Section 123 of the Alabama Constitution of 1901 states "The Governor shall from time to time give to the legislature information of the state of the government and recommend for its consideration such measures as he may deem expedient, and at the commencement of each regular session of the legislature and at the close of his term of office, he shall give information by written message of the condition of the State, and he shall account to the legislature as may be prescribed by law for all monies received and paid out by him or by his order, and **at the commencement of each regular session he shall present to the legislature estimates of the amount of money required to be raised by taxation for all purposes.**" As can be seen, the Governor is required to submit a budget to the legislature.

Article V, Section 113 of the Alabama Constitution of 1901 states "**The supreme executive power of this State shall be vested in a Chief Magistrate who shall be styled the Governor of the State of Alabama.**"

Article V, Section 120 of the Alabama Constitution of 1901 states "**The Governor shall take care that the laws be faithfully executed.**"

Not only may the Governor introduce legislation, but in certain situations statutes direct the Governor to "secure the introduction of a bill." Tayloe v. Davis, 102 So. 433, (1924). Indeed the Governor has a "constitutional duty . . . to recommend for the consideration of the legislature such measures as he may deem expedient . . ." Tayloe v. Davis.

In other words, if the Governor did not perform these acts, he would be derelict in his duties, and could be compelled to perform those ministerial duties through a writ of mandamus. To require a Governor to register as a lobbyist when he is merely carrying out the duties of the office he was elected to would defeat the purpose of the lobbying/lobbyist statutes.

Further, there is no remuneration or personal gain received by the Governor through his efforts of introducing legislation, but those efforts are merely the responsibilities of the office of Governor.

By looking closely at Section 36-25-1(18) which defines who is a lobbyist, the analysis is as follows:

Section 36-25-1(18)(a)(1) includes as a lobbyist a person who receives compensation or reimbursement from another person, group, or entity for lobbying. This clearly does not apply to the Governor of Alabama, who is an elected official, charged with certain responsibilities.

Section 36-25-1(18)(a)(2) includes as a lobbyist a person who lobbies as a regular and usual part of employment whether or not any compensation in addition to his regular salary is received. Likewise, this section would not apply to the Governor as he is an elected official carrying out the responsibilities of his office.

Section 36-25-1(18)(a)(3) includes as a lobbyist a person who spends in excess of one hundred dollars (\$100) for a thing of value, etc. during a calendar year to lobby. As with the above sections, this section does not apply to the Governor of the State of Alabama, as no funds are expended by him.

Section 35-25-1(18)(a)(4) includes as a lobbyist a consultant to the state, county, or municipal levels of government, or their instrumentalities in any manner employed to influence legislation or regulation, etc. As with the above statutes, this section is not applicable to the Governor of the State of Alabama.

Section 36-25-1(18)(a)(5) includes as a lobbyist an employee, a paid consultant, or a member of the staff of a lobbyist who regularly communicates with the members of a legislative body regarding pending legislation.

As with Section 36-25-1(18)(a)(1) through (4) this section, also, does not apply to the Governor of the State of Alabama.

Section 36-25-1(18)(b) excludes certain categories of persons from the definition of a lobbyist. Section 36-25-1(18)(b)(1) excludes from the definition of a lobbyist a member of a legislative body on a matter which involves a persons official duties.

Of all the exclusionary statutes under Section 36-25-1(18)(b), Section (b)(1) would appear on its face to be the closest section applicable to the Governor of the State of Alabama, in that the Governor when presenting matters to the Legislature is merely performing official duties.

Likewise, Section (b)(2) excludes from the term lobbyist a person or attorney rendering professional services where those services are not otherwise connected with legislative, executive, or regulatory action. This section does not apply to the Governor of the State of Alabama.

Section (b)(3) excludes from the term lobbyist reporters and editors while pursuing normal reportorial and editorial duties. Again, this section is clearly unapplicable to the Governor.

Section (b)(4) excludes from the term lobbyist a person exercising his or her first

amendment rights to communicate with members of a legislative body.

Section (b)(5) excludes from the term lobbyist a person who appears before a legislative or regulatory body or executive agency to either sell or purchase goods and/or services.

Section (b)(6) excludes from the term lobbyist a person whose primary duties or responsibilities do not include lobbying, but who may from time to time organize social events for members of a legislative body.

Clearly, Sections (b)(2) through (6) do not have any application as regards to the Governor of the State of Alabama.

The only section that remotely relates to the Governor's situation is Section (b)(1) which excludes from the term lobbyist a member of a legislative body on a matter which involves that person's official duties.

The purpose of this section is to allow an elected member of the legislative branch of government to draft, introduce, attempt to enact or defeat legislation without the burden of requiring that elected member of the legislative body to register as a lobbyist. To do so would be illogical in that the legislator is elected for the purpose of promulgating legislation.

Carrying this analysis a step further, it would be illogical to require the Governor of the State of Alabama to register as a lobbyist when he is merely performing the duties required of his elected position.

As to the second question presented to the Ethics Commission regarding members of the Governor's staff registering as lobbyists, a different analysis is necessary.

Due to the fact that he is not appointed solely for the purpose of dealing with matters before the legislature, the Governor's Legislative Liaison is not a lobbyist, and therefore, not required to register with the Ethics Commission as a lobbyist. In other words, the Governor's Legislative Liaison acts as an extension of the Office of Governor.

As to the Governor's Fiscal Officer and Finance Director, Section 36-25-1(18)(b)(2) excludes from the definition of lobbyist a person who is merely providing professional services, advising clients on the drafting of bills, the effect of proposed legislation, etc.

Based on this, the Governor's Fiscal Officer and Finance Director would not be required to register as a lobbyist as he is merely providing consulting and/or advisory services to the

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Governor.

By the same token, Section 36-25-1(18)(b)(2) would exclude from the definition of a lobbyist the Governor's Legal Advisor to the extent he is merely rendering professional services and opinions relating to pending or proposed legislation.

The problem arises, however, with the final portion of Section 36-25-1(18)(b)(2) which states "where those professional services are not otherwise connected with legislative, executive, or regulatory action."

When the Legal Advisor appears before the legislature attempting to have enacted the Governor's proposed budget, legislation, etc., he is acting as an extension of the Governor and not as a lobbyist.

In other words, the Governor's Legal Advisor is merely standing in the place of the Governor, advancing those programs on behalf of the Governor.

### CONCLUSION

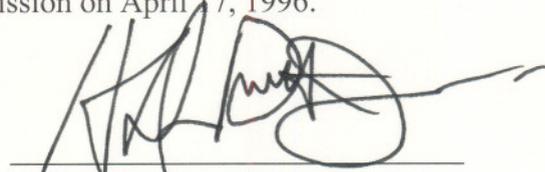
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**AUTHORITY**

By 4 - 0 vote of the Alabama Ethics Commission on April 17, 1996.

A handwritten signature in black ink, appearing to read "H. Dean Buttram, Jr.", written over a horizontal line.

H. Dean Buttram, Jr.  
Chair  
Alabama Ethics Commission