Alabama Ethics Commission

Administration

Executive Director
Thomas B. Albritton

Special Assistant to the Director
Cynthia Raulston

Chief Special Agent
Chris Clark

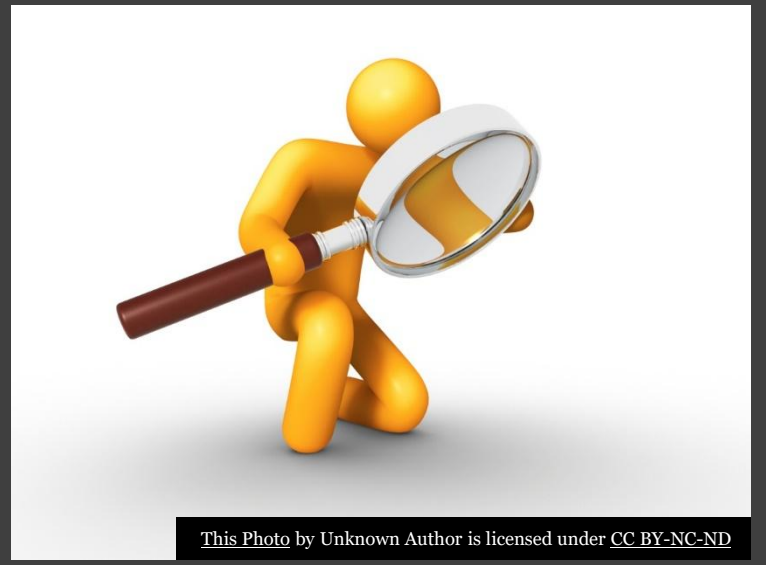
Byron Butler
Executive Assistant

Brian Paterson
Asst. General Counsel

What do we do?

This Photo by Unknown Author is licensed under CC BY-NC-ND

This Photo by Unknown Author is licensed under CC BY-NC-ND



This Photo by Unknown Author is licensed under CC BY-NC-ND

What does the Commission do?

- Over 1000 informal opinions given annually, primarily to counties and municipalities
- Numerous formal opinions which give protection from prosecution and define this area of the law
- Educates throughout the state at all levels
- “weeds out” meritless claims that would otherwise waste valuable resources and refers or fines those that are clear violations

Possible Outcomes

1. Dismissal

- 2. Administrative Resolution
  - Respondent petitions and Commission agrees
  - Unanimous vote of Commission that Respondent committed a “minor violation”
  - Attorney General or district attorney must agree
  - Up to $6,000 fine per minor violation
  - May not be prosecuted for the behavior

- 3. Referral to a district attorney or Attorney General

- Class B felony (2-20 years)
- Class A misdemeanor (up to a year)
- Fine of up to $6,000 per violation (Administrative Resolution)

What about….

Vendors

This Photo by Unknown Author is licensed under CC BY-SA

This Photo by Unknown Author is licensed under CC BY-SA-NC

- Vendor relationships are not specifically covered under the current version of the law.

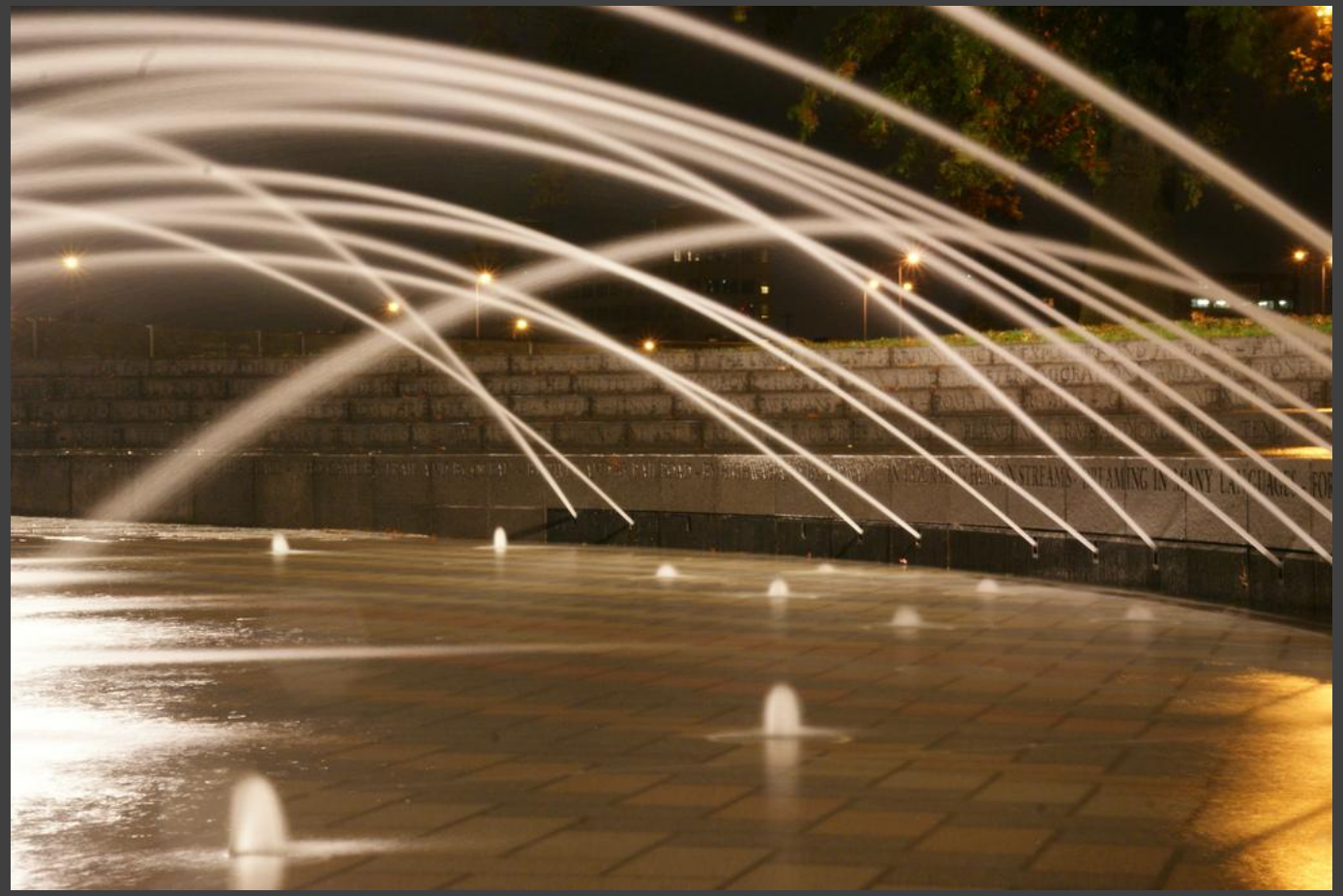
Advisory Opinions in this Area

- Most fact patterns involve some application of principles found in 36-25-1 (exceptions to definition of “thing of value”), 36-25-5, 5.1, 7 and 13 (use of office, corruption, and revolving door)

Basic Questions Involved

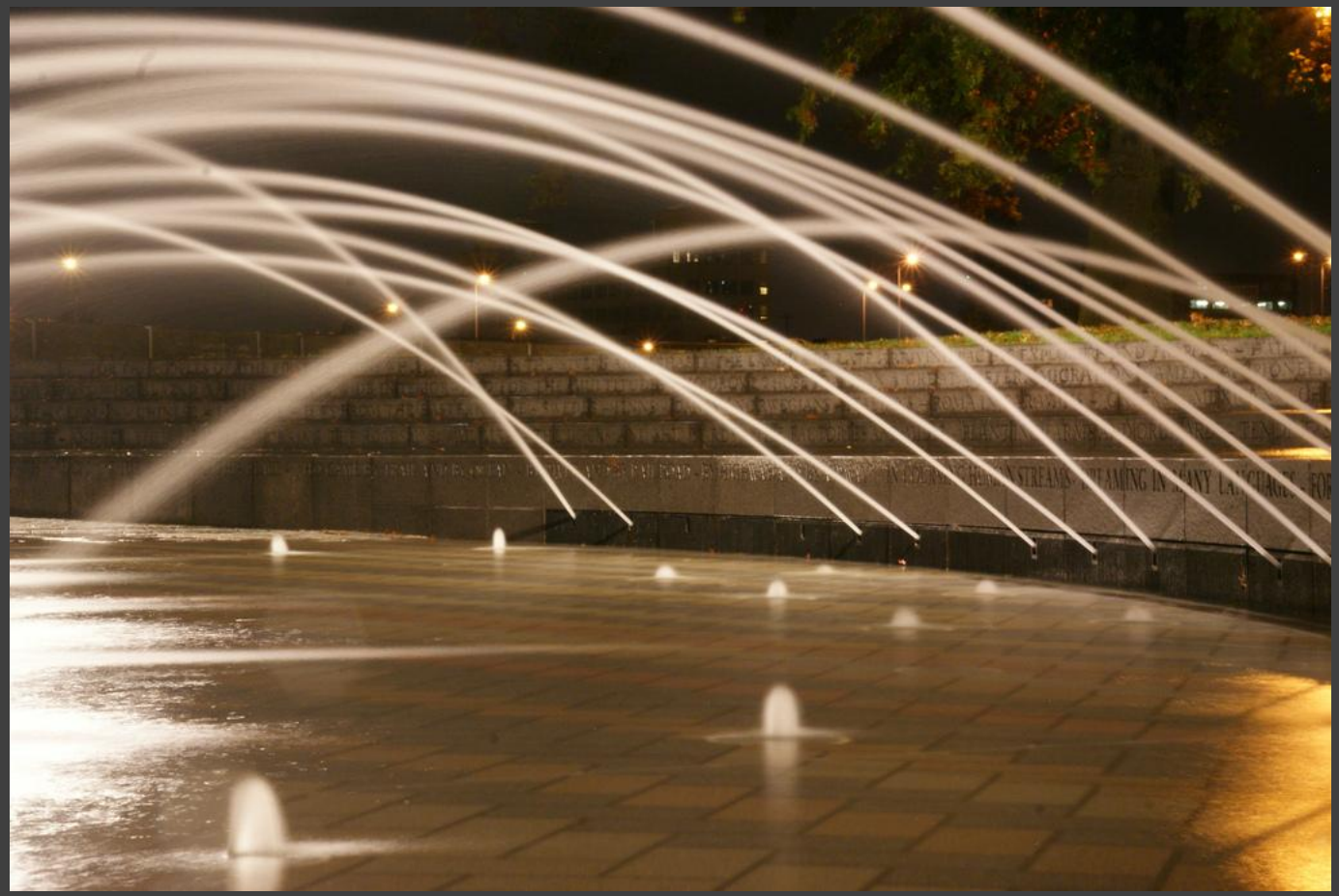
- As a public employee, are there limits on my interaction with them at conferences or other official occasions?
- Can they give me stuff?
- Can I be one while being a public employee?
- When I leave public service, can I go work for one?

Ala. Code §§36-25-5 and 7



This Photo by Unknown Author is licensed under CC BY-SA-NC

Use of office for personal gain



Intent to corruptly influence

This Photo by Unknown Author is licensed under CC BY-SA-NC

WHO IS A 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.

WHO IS A PUBLIC EMPLOYEE ?

- Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities who is paid in whole or in part from state, county, or municipal funds.

MY FAMILY, MY BUSINESS ?

Family Member of the Public Employee

- The spouse or a dependent of the public employee.

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.

MY FAMILY, MY BUSINESS ?

Business with Which the Person is Associated

- Any business of which the person or a member of his or her family is an

officer,
owner,
partner,
board of director member,
employee, or
holder of more than five percent of the fair market value of the business.

Ala. Code § 36-25-5(c)

- No public official or public employee shall use or cause to be used

  equipment,

  facilities,

  time,

  materials,

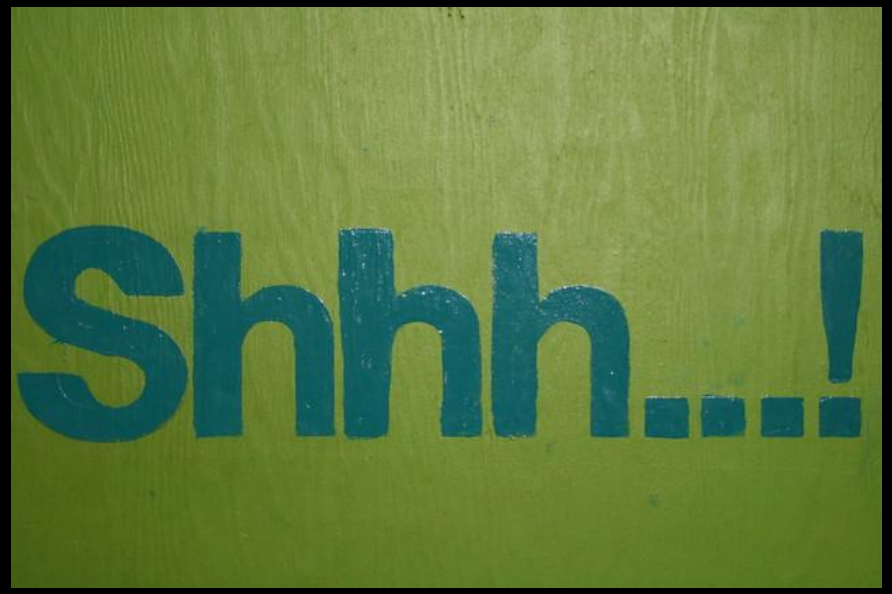
  human labor, or

  other public property under his or her discretion or control

Ala. Code § 36-25-5(c)

- 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.

Use of office for personal gain



This Photo by Unknown Author is licensed under CC BY

§36-25-8

Use of confidential information for financial gain

Ala. Code §36-25-8

- "No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way **that could result** in financial gain other than his or her regular salary as such public official or public employee **for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business**."

Corruptly Influence

§36-25-7(a)

Ala. Code §36-25-7

- No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive anything for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

Corruptly influence

Thing of value
Principals and lobbyists
§36-25-5.1

People may wonder…

Ala. Code §36-25-1(34)(b)

https://www.civicsolar.com/sites/default/files/support_article/images/hpb8h6fk3z511.jpg

Gifts from vendors are allowed, provided…

- Ala. Code § 3 6-25-1 (34)(b)(1 0) provides as an exception to the definition of "thing of value" "compensation and other benefits earned from a nongovernment employer, VENDOR, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee." (Emphasis added)

What is an Educational Function?

- Meeting, event, or activity
- Held within Alabama OR within continental US when attended by participants from out of state
- Organized around a formal program or agenda
- Educational or informational speeches, debates, panel discussions, or other presentations
- Concerning matters with the scope of duties of participants' official duties or matters of public policy

Widely Attended Event

- “a gathering, dinner, reception, or other event of mutual interest to a number of parties at which it is reasonably expected that more than 12 individuals with a diversity of views or interests will be present.”

Economic Development Function

- “any function reasonably and directly related to the advancement of a specific, good-faith economic development or trade promotion project or objective.”

Transportation and Lodging?

- Yes, for **Educational Function** and **Widely Attended Event** IF
- a speaker or a panel participant by presenting information related to his/her agency or matters pending before his/her agency OR
- performing a ceremonial function appropriate to his/her official position OR
- if the PO's or PE’s attendance at the event is appropriate to the performance of his/her official duties or representative function

Transportation and Lodging?

- Yes, for **Economic Development Function** if it is necessary to facilitate a public official's or public employee's participation.

- **Hospitality Exception**
  - Hospitality, food and beverages as an integral part of an educational function, economic development function, work session or widely attended event such as a luncheon, banquet, or reception hosted by a civic club, chamber of commerce, charitable or educational organization or trade or professional association
  - Spouses included

Lobbyists $25/$150

Principals $50/$250

This Photo by Unknown Author is licensed under CC BY-SA

“teacher gift opinion” not just for teachers

OLD OPINION

- "The Ethics Law does not make a distinction between legislators, county commissioners, school teachers, etc. The law allows gifts, regardless of the source, to be of a de minimis value only." (That is, $25.00)

- AO 2011-12 (Sally Brewer Howell)

New opinion

- “To the extent that portions of Advisory Opinion No, 2011-12 can be read as continuing the per se prohibition **on all individuals and organizations** - not just principals, lobbyists or subordinates of lobbyists - providing a "thing of value" to any public official or employee in this state, those portions are overruled.”

- “The Commission will continue to recognize the exceptions found in Ala. Code § 36-25-1(34)(b) to be a **"safe harbor"** for public employees and officials, but public employees and officials are no longer bound by those exceptions outside the clear context of Section 5.1. The prohibitions of Sections 5, 7 and 23(c) remain as they always have.”

PRACTICAL GUIDANCE MOVING FORWARD

Is the giver a principal, lobbyist, or subordinate of a lobbyist?

Look at the relationship of the parties (their relative positions)

Look at the value of the gift

Is the gift appropriate for the situation?

If in doubt, keep it $32.00 and under

Don’t accept anything if it’s being given to corruptly influence your actions

Random Drawings

- AO 2000-63 – Based upon the specific facts presented, an assistant director for the Alabama Department of Human Resources attending a conference as a representative of the Department may accept a door prize won in conjunction with her attendance at the conference whereby all attendees participated in a random drawing; provided the acceptance of the door prize required no affirmative action on her part, the prize is not given in exchange for official action, and the door prize is incidental to her attendance at the conference.

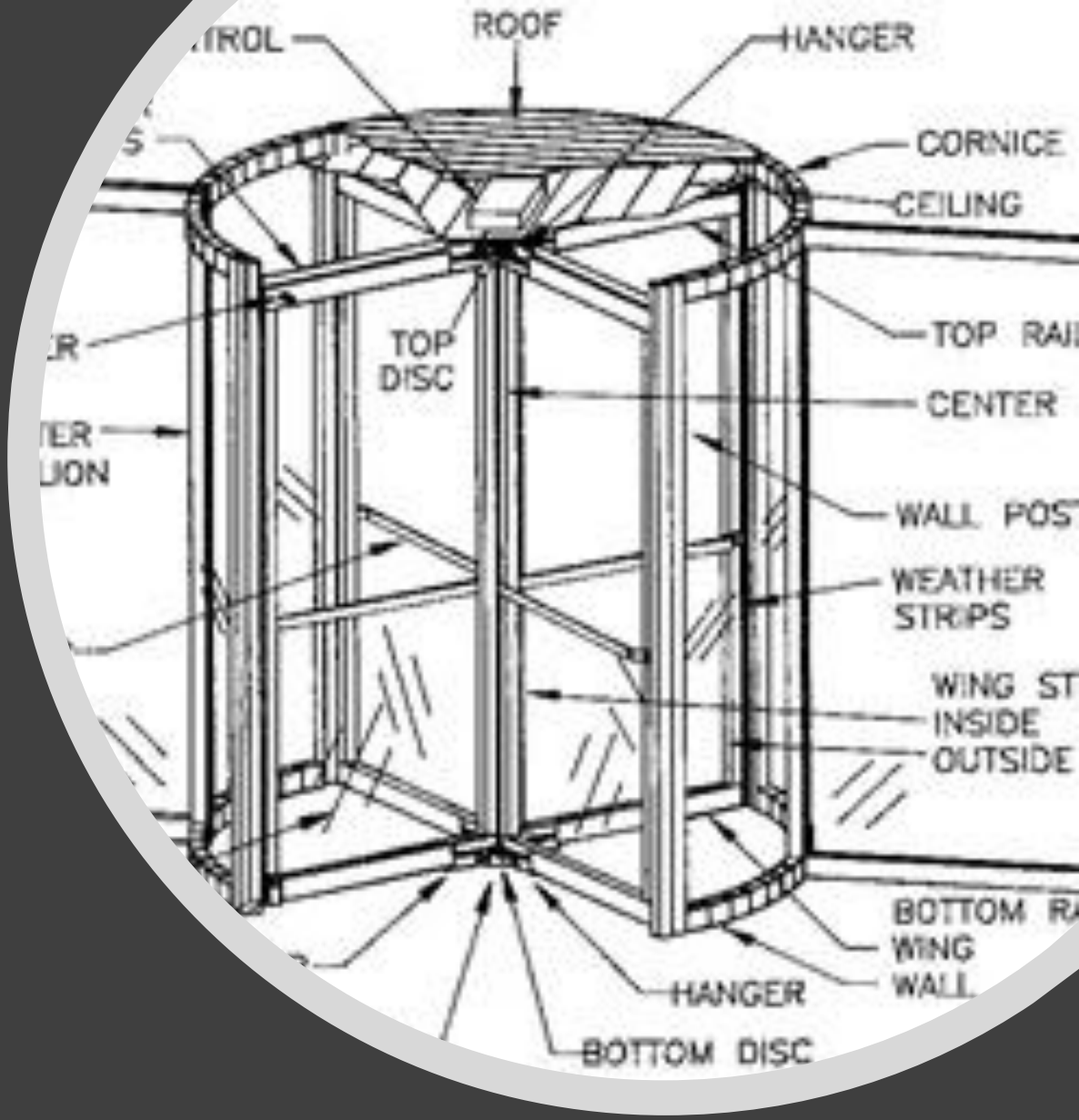
Exceptions under circumstances that **MAKE IT CLEAR** unrelated to official position

- Family member
- Friend
- Compensation and other benefits from a non-government employer

Potential Corrupt Influence/Use of Office or Position

"Revolving Door"

§36-25-13



This Photo by Unknown Author is licensed under CC BY-SA-NC

Are you a public official?

Are you a public employee?

You cannot represent back for 2 years

Are you or did you…

A public official
Director
Assistant Director
Department or division chief
Purchasing or procurement agent
Negotiate/approve contracts, grants, awards
Position of authority

You cannot contract back for 2 years except for transition

Did you directly…

regulate
audit
investigate

A private business, partnership, corporation, or individual?

You cannot work for that entity/individual for 2 years

Did you personally participate in a matter in which the state has a direct and substantial interest ?

You cannot represent them as an attorney or aid, counsel, advise, consult or assist them in that matter

Duty to Report
§ 36-25-17

Every governmental agency head shall within 10 days file reports with the commission on any matters that come to his or her attention in his or her official capacity which constitute a violation of this chapter.

Whistleblower

- A supervisor cannot discharge, demote, transfer, or otherwise discriminate against an employee because he or she filed a complaint with the Ethics Commission or otherwise gave truthful testimony.

- No public employee can file a complaint against a public official or public employee without having a good faith basis for believing it's true and accurate.

AO-96-97

- Board member who is sole vendor in the geographic area of board may do business with the Board if competitive bid laws are followed and where purchases are exempt from bid law, must sell at or below invoice price and not profit from the transaction.

AO 96-120

- Employees of the Alabama Department of Transportation (ALDOT) may accept part-time employment from a blind vendor/manager who has vending machines at state rest areas, provided there is no use of public time, equipment, property, etc., that the ALDOT employees did not use their position with ALDOT to obtain the employment, and the outside employment does not conflict with their employment with ALDOT.

AO 97-106

An employee with the Board of Education, who is responsible for making purchases on behalf of his employer, may not accept part-time employment with a vendor who does business with his primary employer even though the bid laws may be followed since it is highly probable that the opportunity for the secondary employment came about because of this individual's position with the Board of Education.

AO 2000-03

- A departmental operations specialist with the Alabama State Docks may, in conjunction with a privately-owned business, sell promotional and advertising novelty items to various organizations and may sell these items to vendors doing business with the State Docks; provided (1) she not use state equipment, facilities, time, materials, labor, or public property under her discretion or control to assist her business in either marketing the items or in obtaining the opportunities, (2) she has no regulatory or contractual authority over the vendors with which she wishes to do business, and (3) she does not have any other business dealings with the vendors in her position with the State Docks.

AO 2000-21

- A program specialist with the Alabama Department of Human Resources may accept employment with a vendor providing services to the Department provided he did not hold a position of authority while employed with the Department, but he may not represent his new employer before the Department for a period of two years after leaving public service.

AO 2000-23

- The former Director of Communications for the city of Birmingham should be allowed to accept employment with a vendor with which he had no personal involvement while employed with the city, but he may not, for a period of two years after retiring or otherwise leaving public service, represent clients, including his employer, before the city of Birmingham and its various departments.

AO 2000-23

- The former Director of Communications for the City of Birmingham may not, for a period of two years after retiring or otherwise leaving public service, accept employment with a vendor doing business for the city when he was personally involved in representing the city in dealing with that vendor, coordinated and reviewed vendor contracts, reviewed and approved vendor billings and otherwise made recommendations, either directly or indirectly, to the mayor regarding vendors and contracts.

AO 2004-19

- The University of South Alabama, by and through the Vice President for Financial Affairs, may solicit funds and donations to sponsor a golf tournament with all proceeds helping to support the University's athletic department provided (1) a generic/general letter is mailed equally to all vendors, community organizations, and individuals, (2) vendors conducting business with the University are not singled out for donations nor offered business in return for donations, and (3) there is no personal gain on the part of any employee of the University; however, as public employees, the employees of the University may not solicit lobbyist to contribute to the tournament.

AO 2004-22

- Employees of the Alabama Crime Victims Compensation Commission may solicit donations and prizes for the Department's Victim's Fund Run through personal contact and letters when all funds will be retained by the Commission for distribution to victims of crimes; provided (1) vendors conducting business with the Commission are not singled out for donations nor offered business in return for donations, (2) there is no personal gain on the part of any employee of the Commission, (3) the solicitations are made in a generic/general way so that specific vendors do not feel coerced into contributing, (4) the employees make the solicitations during normal business hours only to the extent that the Commission's normal operations are not hindered in any manner, and (5) the employees of the Commission, as public employees, do not solicit lobbyists to contribute to the Victims' Fund Run.

AO 2008-04

- Employees of the Mobile County Public School System may solicit contributions for the Large City Superintendents' Conference ; provided vendors conducting business with the school system are not singled out for donations nor offered business in return for donations, the solicitations are made in a general generic way so that specific vendors do not feel coerced into contributing, all funds will be retained for the purpose of the conference, and there is no personal gain accruing to employees of the school system.

AO 2011-01

- Non-participating vendors at a conference or other event may provide meals and other food or beverages to a public official or employee provided they not use the opportunity to lobby or as a sales opportunity and if the vendor is a lobbyist or principal, there is a limit of $25.00 per meal for lobbyists and $50.00 for principals.

AO 2011-11

Lobbyists, principals, and vendors may provide hospitality to public officials and public employees in relation to an educational function or widely attended event when it is not an integral part of the overall event, but is held in conjunction with the event; provided the hospitality has been sanctioned by the sponsors of the event.

AO 2011-12

- School officials and employees may participate in giveaways sponsored by vendors at AASB gatherings or other local gatherings as these are door prizes.

AO 2011-12

- Vendors may only give gifts to school board members, teachers, retired school employees or other school employees of a de minimus value. *(Overruled in part by Opinion # 2016-34.)*

AO 2012-01

- An employee with the Department of Fisheries and Allied Aquacultures at Auburn University who is also part owner of a company requesting vendor status with the University, may sell products to the University through his company as a sole U.S. distributor; provided (1) all business activities are conducted separate from the performance of his University responsibilities, (2) any use of University equipment, facilities, services or personnel receives approval from appropriate University departments and representatives, does not interfere with its official use by the University, and is paid for by the employee/company owner, (3) the Dean of Agriculture or his designee reviews all aspects of the research and/or testing to ensure it meets University standards, (4) the employee/company owner does not apply for or perform purchases on behalf of the University which must instead be made by other personnel and approved by the Department chair, (5) all sales are only made at cost consistent with current price, (6) the employee/company owner does not profit from the transaction, and (7) a copy of the contract is filed with the Ethics Commission within 10 days of execution.

AO 2013-01

- The former Director of Technology for the Trussville City School System may accept employment with a vendor who has provided services to the school board when he was involved in awarding the contract more than two years ago (2006 and 2007) and had nothing but ministerial involvement with the company since that time; however, he may not represent his new employer in any dealings with the Trussville City School System for a period of two years after leaving employment with the System.
-

AO 2014-05

- An employee of the Alabama Department of Transportation (ALDOT) who is serving as a representative of the American Society of Civil Engineers (ASCE) may not solicit anything on behalf of the private organization from a lobbyist (other than a campaign contribution), from a subordinate, from a business or entity where they personally participate in the direct regulation, audit, or investigation of that entity, or from a vendor doing business with the employee's entity (ALDOT), and no public resources, including but not limited to time, labor, etc., may be used to assist in the fund-raising efforts of ASCE.

AO 2016-37

- Employees of the University of Alabama System or Auburn University who may be either public officials or public employees may not coerce donations from vendors using the fact that the vendor wishes to receive or maintain a contract with the university as leverage for the donation but the Ethics Law does not prohibit solicitations from vendors in all instances.

AO2021-01

- Under the ethics laws, a public official's associated business may conduct business with the agency which the public official serves provided that the transactions are either competitively bid, whether required or not, or there is evidence that makes it clear the business was not obtained because of their public position, which must be determined on a case~by-case basis, and the public official completely abstains from the issue. On this issue, further guidance should be sought from the Attorney General's office. All contracts must be filed with the Alabama Ethics Commission .

AO 2023-05

- The Ethics Act does not prohibit employees of ALDOT from contacting, discussing, or entering into business agreements with manufacturers, vendors, consultants, or contractors of ALDOT for the purpose of financial gain for their business provided they conduct all activities related to their private business on their own time and do not otherwise use their position, including any confidential information, or public equipment, facilities, time, materials, human labor, or other public property under their discretion or control, to benefit themselves or their private business, and provided they do receive not solicit or anything, including an opportunity for the private business, for the purpose of corruptly influencing their official action.

Answers to Original Questions

- As a state employee, are there limits on my interaction with them at conferences or other official occasions?

  - In terms of conferences which you're attending, for the most part no as long as an exception (WAE, Educational Function) applies. Out-of-state conferences often fall within these exceptions ("scholarships," etc.). With respect to meals and gifts outside that context, the most responsible approach is to say no or pay for it yourself. Under no circumstances can you promise them any official action in return for items or favors, and you cannot leverage your position in order to gain special, personal favors from them.

Can they give me stuff?

- Again, the most responsible approach is to say no or pay for it yourself. In the context of holiday favors/gifts (food trays, etc.) for the office, they should be shared by the entire office. Same goes for “gift cards.” Under no circumstances can you promise them any official action in return for items or favors, and you cannot leverage your position in order to gain special, personal favors from them. Sponsorship for office events? They can’t be singled out and vendors under contract should be avoided. This is especially true if you’re the one who deals with them directly or you have discretionary authority over their contract.

Can I be one while being a public employee?

- Under current Advisory Opinions you can, if the work is subject to bid law and you stay out of the process; and if it's incapable of being bid you can't profit from it (must sell at cost). Under no circumstances can you represent their (or any other company's) interests before your current public employer for personal gain.
- Always remember confidentiality and corruption rules.

When I leave state service, can I go work for one?

- Under the current Advisory Opinions, not if you dealt directly with their contract within the previous two years (meaning, your involvement was more than just ministerial). Under no circumstances can you represent their interests before your former public employer for two years after leaving.

Tom.Albritton@ethics.alabama.gov

334-242-2997