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ADVISORY OPINION NO. 2011-12

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Interpretations Of The Revised Ethics Law
As Relates To The Alabama Association Of
School Boards (AASB)

AASB may provide a monthly stipend to its officers who serve on a voluntary basis to partially reimburse them for the time they devote to the organization.

AASB may pay for meals and accommodations of its officers and board of directors during gatherings, conferences, conventions, etc.

AASB may pay for the meals and accommodations of its committee members during gatherings, conferences, conventions, etc.

AASB may pay for meals and accommodations of AASB members for travel to out-of-state conferences and conventions when they are representing the Association and its members.

AASB may provide a nominal travel stipend for AASB members who travel out-of-state to conferences and conventions to represent the Association, when the stipend is for reimbursement of expenses and is not compensation.

It is permissible for AASB to pay for meals and accommodations for non-AASB members who have been invited to participate in AASB events in their official capacity.

AASB may award attendance prizes in the form of gift cards or free registration at its conferences and conventions, as these are door prizes.

Vendors may host dinner for school board members at AASB gatherings or other local gatherings, provided nothing is expected in return.

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

Vendors may only provide gifts to school board members of a de minimis value.

Vendors may only provide gifts to teachers, retired school employees or other school employees, of a de minimis value.

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.

School boards may enact a policy which allows students to contribute a de minimis amount towards a gift card from the class, provided the policy is reasonable, done in good faith and complies with the de minimis requirements in the Alabama Ethics Law.

The Board's attorney may buy lunch for school board members at a work session.

If the Board's attorney is a lobbyist, he may only expend \$25.00 per meal, per official, with an annual limit of \$150.00 per official.

If the Board's attorney works for a principal, he may only expend \$50.00 per meal, per official, with an annual limit of \$250.00 per official.

School board attorneys may not give individual Christmas gifts to school board members or other school employees, unless the gift is of a de minimis value.

Public officials, public employees, including school teachers and other school employees, may accept gifts of any value, when the gift is based on a friendship that transcends the public sector, as exemplified by a pre-existing friendship.

A school board attorney or other vendors and individuals may give gift baskets, cheese trays and other consumable items to the school office for enjoyment by the staff.

A school board attorney may only provide free baseball tickets to school board members and school employees, if it is an integral part of an overall event in which the

board members or other school employees are participating.

School board members and other school employees may be provided tickets, if they pay the face value for that ticket.

There is nothing improper in a school board member buying a legislator lunch or vice-versa.

School board members and other school employees may gain free admission to school events (plays, sporting events, etc.) in their local district.

The Alabama High School Athletic Association may provide school board members free admission to Championship Athletic events, if those school board members have a school in their district participating in the event.

School board members elected or appointed after January 1, 2011, are required to receive Ethics training within 120 days of being sworn into office.

An employee or official who knowingly fails to obtain Ethics training as required by Act No. 2010-762, upon conviction, may be found guilty of a Class A Misdemeanor.

Dear Ms. Howell:

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.

FACTS AND ANALYSIS

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

The Alabama Association of School Boards ("AASB") is the official voice of the state's local school boards and other boards governing K-12 public education agencies. Founded in 1949, AASB has grown in size and stature as a vocal advocate of local school boards. In 1955, the Alabama Legislature designated AASB as the "organization and representative agency of the members of the school boards of Alabama." *Ala. Code* §16-1-6. AASB is governed by its officers and Board of Directors that set policy and make decisions on behalf of the membership. The officers and Board of Directors are assisted by various committees which are formed to provide support to the Association.

AASB's members are all considered "public officials" as that term is defined by Act 2010-764, and a number of questions have arisen regarding that law's general impact upon their membership:

1. **AASB's officers, who serve on a voluntary basis, invest a great deal of time and effort in furtherance of AASB business. In particular, our President must travel to and attend many functions in her official capacity. Is it permissible for AASB's President to accept a monthly stipend from AASB?**

AASB is an organization of public officials whose purpose is to serve the various school systems around the State of Alabama. It is permissible under the revised Ethics Law for board members serving on a voluntary basis to be paid reasonable compensation for their services rendered.

Section 36-25-1(33)(b)(17) states:

"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:

17. Anything either (i) provided by an association or organization to which the state or, in the case of a local government official or employee, the local government pays annual dues as a membership requirement or (ii) provided by an association or organization to a public official who is a member of the association or organization and, as a result of his or her service to the association or organization, is deemed to be a public official. Further included in this exception is payment of reasonable compensation by a professional or local government association or corporation to a public official who is also an elected officer or director of the professional or local government association or corporation for

services actually provided to the association or corporation in his or her capacity as an officer or director.”

Under exception 17 in the revised Ethics Law, an organization of public officials whose purpose is to serve a public function or assist public bodies in serving a public function, may compensate their officers in a reasonable amount for services rendered to that organization. Therefore, AASB may pay its officers who serve on a voluntary basis a monthly stipend to compensate for their time.

2. **Is it permissible for AASB to pay for the meals and accommodations of its officers and Board of Directors during gatherings, including meetings, conferences and conventions?**
3. **Is it permissible for AASB to pay for the meals and accommodations of its committee members during gatherings, including meetings, conferences and conventions?**
4. **AASB members occasionally travel out of state on behalf of AASB and its interests. An example of this is travel to the National School Board Association Delegate Assembly held annually or the Federal Resources Network during which AASB members meet with members of Congress on matters involving public education. Is it permissible for AASB to pay for the meals and accommodations of AASB members for travel to out of state conferences, conventions and gatherings to represent the Association and its members?**
5. **Is it permissible for AASB to provide a nominal travel stipend for AASB members who travel out of state to conferences, conventions and gatherings to represent the Association and its members?**
6. **Is it permissible for AASB to pay for meals and accommodations for non-AASB members who have been invited to participate in AASB events, such as local legislators or other state or local officials?**

AASB holds a number of gatherings throughout the year in the form of meetings, conferences and conventions. During these gatherings, they provide training and important information to school board members, as well as superintendents and other board employees who travel from across the state.

Section 36-25-1(26) defines a public official as:

“(26) 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(25) defines a public employee as:

“(25) 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(33)(b)(12) states:

“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:

12. Payment of or reimbursement for actual and necessary transportation and lodging expenses, as well as waiver of registration fees and similar costs, to facilitate the attendance of a public official or public employee, and the spouse of the public official or public employee, at an educational function or widely attended event of which the person is a primary sponsor. This exclusion applies only if the public official or public employee meaningfully participates in the event as a speaker or a panel participant, by presenting information related to his or her agency or matters pending before his or her agency, or by performing a ceremonial function appropriate to his or her official position; or if the public official’s or public employee’s attendance at the event is appropriate to the performance of his or her official duties or representative function.”

Section 36-25-1(33)(b)(14) states:

“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:

14. Hospitality, meals, and other food and beverages provided to a public official or public employee, and the spouse of the public official or public employee, 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.”

Under the above sections, AASB may pay for meals, accommodations, registration, etc. of its members and committee members during meetings, conferences and conventions.

While exception number 14 requires expenses to be paid by a primary sponsor, it appears that in some of the questions set out above, AASB is the sponsor of the event, but in other circumstances, AASB would like to pay for their members’ attendance to an event that they may not be sponsoring. There is nothing improper under the Ethics Law with AASB paying the expenses related to their members’ attendance, as this is part of their official functions.

The AASB is not able in all circumstances to pay all the expenses related to a member’s attendance at an event. They will from time-to-time provide the members who are attending the event with a small stipend (a nominal value of \$100 to \$200) to help off-set airfare, lodging and meals. It is not compensation, but is meant to assist them in paying the expenses related to their attendance at the event.

Therefore, it is not improper for AASB to provide a nominal travel stipend to members traveling on AASB business, as it is not compensation, but is to help off-set expenses.

Likewise, it is permissible for AASB to pay for meals and accommodations for non-AASB members who have been invited to participate in the AASB events, such as local legislators or other state or local officials, as they have been invited and are attending in their official capacity.

7. **Is it permissible for AASB to award attendance prizes, such as a restaurant gift card, to participating members at its conferences and conventions?**
8. **Is it permissible for AASB to award attendance prizes in the form of free registration at its conferences and conventions?**

Section 36-25-1(33)(b)(7) states:

“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:

7. Rewards and prizes given to competitors in contests or events, including random drawings, which are open to the public.”

As to questions seven and eight, often AASB will award attendance prizes, such as gift cards or free registration at its conferences and conventions to encourage attendance.

The issue of “door prizes” has been dealt with on numerous occasions by the Commission and will not be addressed in detail here.

Having said that, the Commission has held that door prizes are acceptable under the Ethics Law, provided, nothing is required of the public official/public employee to be eligible for the door prize, other than registering their attendance.

In the scenario set out in questions number seven and eight, there are a limited number of these attendance prizes awarded and they conform with the Commission’s position on door prizes.

9. **Is it permissible for vendors to host dinner for school board members at AASB gatherings or other local gatherings?**
10. **Is it permissible for school officials and employees to participate in giveaways sponsored by vendors at AASB gatherings or other local gatherings?**

Section 36-25-1(33)(b)(12) states:

“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:

12. Payment of or reimbursement for actual and necessary transportation and lodging expenses, as well as waiver of registration fees and similar costs, to facilitate the attendance of a public official or public employee, and the spouse of the public official or public employee, at an educational function or widely attended event of which the person is a primary sponsor. This exclusion applies only if the public official or public employee meaningfully participates in the event as a speaker or a panel participant, by presenting information related to his or her agency or matters pending before his or her agency, or by performing a ceremonial function appropriate to his or her official position; or if the public official’s or public employee’s attendance at the event is appropriate to the performance of his or her official duties or representative function.”

Section 36-25-1(33)(b)(14) states:

“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:

14. Hospitality, meals, and other food and beverages provided to a public official or public employee, and the spouse of the public official or public employee, 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.”

Section 36-25-1(33)(b)(15) states:

“**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:

15. Any function or activity pre-certified by the Director of the Ethics Commission as a function that meets any of the above criteria.”

It is common during the holiday season for vendors, law firms, etc. to put on holiday luncheons for clients of that vendor/law firm. This is acceptable under the Ethics Law, provided, nothing is expected in return.

It is recommended, however, that before this activity takes place, the provider have the event pre-certified by the Director of the Ethics Commission to make sure it is in total compliance.

For an analysis of question number 10, please see questions seven and eight.

For an analysis of dinners being provided to attendees at a conference, meeting, etc., please see the detailed analysis in Advisory Opinion Nos. 2011-01, 2011-05, 2011-06 and 2011-09.

11. **Is it permissible for vendors to provide gifts to school board members, such as Christmas gifts?**
12. **Is it permissible for vendors to provide gifts to teachers, retired school employees or other school employees, such as Christmas gifts?**

Vendors often have or seek to build relationships with AASB members in the hope of providing goods or services to local school systems. Vendors or other private businesses often sponsor or otherwise participate in AASB gatherings, such as conferences and conventions, as well as gatherings in local communities.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-36-1(26) defines a public official as:

“(26) 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(25) defines a public employee as:

“(25) 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.”

Sections 36-25-5.1(a) & (b) state:

“(a) No lobbyist, or subordinate of a lobbyist or principal shall offer or provide a thing of value to a public employee or public official or to a family member of the public employee or family member of the public official; and no public employee or public official or family member of the public employee or family member of the public official shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist or principal. Notwithstanding the foregoing, a lobbyist or principal may offer or provide and a public official, public employee, or candidate may solicit or receive items of de minimis value.

(b) A lobbyist does not provide a thing of value, for purposes of this section, merely by arranging, facilitating, or coordinating with his or her principal that is providing and paying for those items.”

Sections 36-25-7(a)(b)(c) & (e) state:

“a) 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.

(b) No public official or public employee shall solicit or receive anything for himself or herself or for a family member of the public employee or family member of the public official for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

(c) No person shall offer or give a family member of the public official or family member of the public employee anything for the purpose of corruptly influencing official action, regardless of whether or not the thing offered or given is a thing of value.

(e) For purposes of this section, to act ‘corruptly’ means to act voluntarily, deliberately, and dishonestly to either accomplish an unlawful end or result or to use an unlawful method or means to accomplish an otherwise lawful end or result.”

While the opinion request limits the question to vendors providing gifts to teachers, etc., this opinion, based on numerous inquiries into the matter, will address all gifts regardless of source; to teachers, school employees or anyone else subject to the Alabama Ethics Law.

Prior to the Special Session of 2010, the Ethics Law contained a specific exception dealing with seasonal gifts. That exception stated:

Section 36-25-1(31)(b)(2) stated:

“(31) THING OF VALUE.

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:

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.”

During the Special Session, that exception was removed from the law and replaced by Section 36-25-1(33)(b)(4), which states as follows:

“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:

4. Greeting cards, items, services with little intrinsic value which are intended solely for presentation (such as plaques, certificates, and trophies), promotional items commonly distributed to the general public, and items or services of de minimis value.”

Certainly, this exception was removed for a reason, that reason being, the limiting of gifts to public officials and public employees.

As set out in the scenario offered by the Association of School Boards, many times there is a purpose behind giving of gifts; that purpose being to influence the awarding of future contracts, etc.

The Ethics Commission has previously stated that it cannot put a dollar amount on what is de minimis without being arbitrary. Two definitions that are beneficial in this analysis are:

(1) That espoused by the Internal Revenue Service, which defines a de minimis benefit as “one for which, considering its value and the frequency with which it is provided, is so small as to make accounting for it unreasonable or impractical . . . In determining whether a benefit is de minimis, you should always consider its frequency and its value. An essential element of a de minimis benefit is that it is occasional or unusual in frequency. It also must not be a form of disguised compensation. Whether an item or service is de minimis depends on all the facts and circumstances.”

(2) *Black’s Law Dictionary*, which states that “The law does not care for, or take notice of, very small or trifling matters. The law does not concern itself about trifles.”

Therefore, in determining what is and what is not de minimis, one must look at whether or not the item has intrinsic value, i.e., can the item be sold for a profit?

While the law clearly states that a lobbyist, a subordinate of a lobbyist or a principal may not give a thing of value to a public official or public employee, under any circumstance, an item that is de minimis is not a thing of value for purposes of the Ethics Law. An important

consideration, however, is whether or not the item (even if de minimis) is being given in an attempt to corruptly influence official action. If an item that is otherwise de minimis is being offered or accepted for the purpose of corruptly influencing official action, it is improper, and is no longer of de minimis value and becomes a thing of value.

The inquiries have increased as the Christmas season approaches, with numerous inquiries being made by and on behalf of school teachers, and whether or not they may continue to accept Christmas gifts from students.

Here at the outset of the analysis, it is important to set out certain parameters.

First of all, the Ethics Law covers public officials and public employees. It makes no distinction between legislators, city councilpersons, school teachers or other public employees. Under the Ethics Law, they are either a public official or a public employee.

Also important to recognize in the analysis of this issue is that, what is permissible for a school teacher also must be permissible for an elected official such as a legislator and vice versa. As the Ethics Law makes no distinction between teachers and elected officials, the Ethics Commission also cannot make that distinction.

As the Ethics Law is a criminal statute, common sense is also an important part of the equation.

There is nothing improper or in violation of the Ethics Law for vendors, lobbyists, etc. to provide consumable items such as pecans, fruit baskets, cookies, cheese plates, etc. to public offices for enjoyment by the staff or other people having business with that office. For example, a law firm may provide a box of cookies to a judge's office. The box is set out in the reception area for the staff and other individuals to enjoy. Likewise, a vendor may bring a cheese plate to a school for the enjoyment of the school staff, providing, obviously, that nothing is expected in return.

In October of 2011, the Commission rendered Advisory Opinion No. 2011-09, which dealt in part with gifts. That opinion made a distinction between personal gifts and gifts for an office. That opinion stated "... gifts such as turkeys and hams do have a monetary value. Due to the fact that the exception for seasonal gifts was removed from the Ethics Law during the Special Session, it is the Commission's opinion that the practice of giving turkeys, hams, etc. to public officials during the holiday season is no longer permissible."

Opinion No. 2011-09 looked at gifts from the perspective of the gift being given personally to a public official and not to the staff.

The same analysis must be applied to public employees. As a general rule, gifts such as hams, turkeys, or gift cards with a specific monetary value are not permissible under this exception.

Using the definition of *de minimis* set out both by the Internal Revenue Service and *Black's Law Dictionary*, there are several categories of gifts which are acceptable.

Again, it must be pointed out that nothing may be given if it is given in an attempt to corruptly influence official action. This can be an effort to corruptly influence legislation, or in an extreme example, attempting to have a school teacher give a child a better grade.

The following list, while not all inclusive, sets out some types of gifts that are acceptable for school teachers to receive:

- 1) Fruit baskets, homemade cookies, etc.
- 2) Christmas ornaments of little intrinsic value
- 3) Coffee mugs filled with candy or of a holiday nature.
- 4) Any item that the teacher may use to assist him/her in performing his or her functions as a teacher, such as notebooks, school supplies, etc.
- 5) CDs or books of a nominal value, scarves, etc.

It should be pointed out that gift cards may be given at any time, not just during the holidays, to teachers or to schools to allow the teacher or school to purchase items for the benefit of the class.

Obviously, the focus during the Special Session of December 2010 was limiting perks and gifts to members of the Legislature. The Commission has seen many unintended consequences. For example, a key issue in the Special Session was prohibiting members of the Legislature from getting free tickets to the Iron Bowl. However, the prohibition extended to and placed prohibitions on individuals getting free tickets to high school football games.

Likewise, the focus of the Ethics reform was to place limits on what could be accepted by legislators. However, the unintended consequences trickled down and affect school teachers just as they affect legislators.

To say that it is permissible for school teachers to accept gifts but not legislators places an improper and artificial interpretation on the Ethics Law. The Ethics Law covers public officials and public employees equally.

The only distinction between public officials and public employees contained in the Ethics Law is the definition of family member. Other than that definition, the law applies equally to both groups of individuals.

There is no distinction, therefore, between school teachers and legislators, or county commissioners and school bus drivers. They are all public officials or public employees. If the Commission were to say that it is permissible to give school teachers gifts that fall outside the parameters set out in the law, it would not be long before an attempt is made to open that up to include city council members, county commissioners and then legislators. In other words, if a student can give a gift to a teacher, why can't a farmer from Winston County give a shotgun to a county commissioner?

While it is clearly understood that nothing may be given in an attempt to corruptly influence official action, there are subtle ways to attempt to influence official action.

The suggestion that it is harmless for a school child to give a Christmas gift to their teacher ignores the potential for abuse.

Suppose for example that a Junior High School child is struggling and hopes by giving a nice gift to the teacher, the teacher will reward them with a better grade. Or that the High School Senior who is attempting to get into a quality college, does the same thing.

Finally, what of a college senior who is attempting to get into Harvard Law School?

These examples illustrate the potential for abuse. What started off as a simple gift now may be attempting to corruptly influence official action.

As previously stated, if the door is opened to allow these activities for school teachers, what is to prevent it from being extended to city council members receiving gifts, or legislators receiving free tickets to the Iron Bowl, as has been done in the past?

To allow this interpretation of the Ethics Law denies and rejects the intent of the leadership at the Special Session and the sponsors of the Ethics reform bills. It, in effect, would open the door to allow things to become as they were before the Ethics reform of 2010.

Apparently in many school systems, it is common practice for the PTA or classroom mother to collect a small amount of money from each student and pool toward the purchase of one gift card.

Allowing this would allow the class to give a little more substantial gift to the teacher, while maintaining the de minimis value of each specific contribution from the students.

To allow this, however, the school board must have a policy setting this out. It should be noted that the school board cannot enact a policy that loosens up the Ethics Law. Any policy must, therefore, comply with the de minimis standard set out in the Ethics Law.

In other words, the policy must be enacted in good faith, be reasonable and consistent with the Alabama Ethics Law.

13. Is it permissible for the board's attorney to buy lunch for school board members or other school employees on occasion?

Members of school boards generally maintain congenial relationships with local professionals who do business with the board, such as their local board attorney.

Section 36-25-1(33)(b)(16) states:

"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:

16. Meals and other food and beverages provided to a public official or public employee in a setting other than any of the above functions not to exceed for a lobbyist twenty-five dollars (\$25) per meal with a limit of one hundred fifty dollars (\$150) per year; and not to exceed for a principal fifty dollars (\$50) per meal with a limit of two hundred fifty dollars (\$250) per year. Notwithstanding the lobbyist's limits herein shall not count against the principal's limits and likewise, the principal's limits shall not count against the lobbyist's limits."

There is nothing improper under the Ethics Law for a board attorney to buy lunch for school board members or other school employees, as it could be considered a work session.

If the attorney is registered as a lobbyist, they may only expend \$25.00 per meal per public official, with a limit of \$150.00 per year per official.

Likewise, if the board attorney works for a principal, that limit is \$50.00 per meal and \$250.00 per year, per official.

14. Is it permissible for the board attorney to give a Christmas gift to a school board member or other school employees?

Section 36-25-1(33)(b)(3) states:

“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:

3. Anything given by a friend of the recipient under circumstances which make it clear that it is motivated by a friendship and not given because of the recipient's official position. Relevant factors include whether the friendship pre-existed the recipient's status as a public employee, public official, or candidate and whether gifts have been previously exchanged between them.”

The issue of gifts has been set out in detail in questions 11 and 12.

Based on that, a board attorney may not give individual Christmas gifts to school board members or other school employees, unless those gifts are of de minimis value as set out in the above question, or if there is a friendship between the attorney and the individual board members that transcends their business relationship.

15. Is it permissible for the board attorney to provide free baseball tickets to school board members or other school employees?

The Ethics Law previously included an exception to allow items such as baseball tickets to be given to public officials and public employees. That exception was found at Section 36-25-1(31)(b)(3). That section stated as follows:

“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:

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.”

During the Special Session of December of 2010, this exception was stricken and in its place, Section 36-25-1(33)(b)(8) was included.

Section 36-25-1(33)(b)(8) states:

“**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:

8. Anything that is paid for by a governmental entity or an entity created by a governmental entity to support the governmental entity or secured by a governmental entity under contract, except for tickets to a sporting event offered by an educational institution to anyone other than faculty, staff, or administration of the institution.”

Therefore, as a general rule, board attorneys may not provide free baseball tickets to school board members or other school employees.

Another exception that exists is Section 36-25-1(33)(b)(14) which states:

Section 36-25-1(33)(b)(14) states:

“**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:

14. Hospitality, meals, and other food and beverages provided to a public official or public employee, and the spouse of the public official or public employee, 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.”

If the tickets to a baseball game are given as part of an overall widely attended event, educational function or economic development function and is an integral part of that event, tickets to ballgames may be given to board members and school employees attending that event. Short of this, tickets are no longer permissible.

Section 36-25-1(34) defines value as:

“(34) Value. The fair market price of a like item if purchased by a private citizen. In the case of tickets to social and sporting events and associated passes, the value is the face value printed on the ticket.”

Tickets may be provided if the public official/public employee pays the face value of the ticket.

16. Can a school board member buy a legislator lunch or vice-versa?

As part of their duties, AASB members and local board of education employees are often expected to attend various local events in their respective school systems, such as athletic events. They believe local board member and employee participation in such events is beneficial to the schools, students and the community.

Section 36-25-7 states:

“(a) 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.

(b) No public official or public employee shall solicit or receive anything for himself or herself or for a family member of the public employee or family member of the public official for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

(c) No person shall offer or give a family member of the public official or family member of the public employee anything for the purpose of corruptly influencing official action, regardless of whether or not the thing offered or given is a thing of value.

(d) No public official or public employee, shall solicit or receive any money in addition to that received by the public official or public employee in an official capacity for advice or assistance on matters concerning the Legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member. Notwithstanding the foregoing, nothing in this section shall be construed to prohibit a public official or public employee from the performance of his or her official duties or responsibilities.

(e) For purposes of this section, to act ‘corruptly’ means to act voluntarily, deliberately, and dishonestly to either accomplish an unlawful end or result or to use an unlawful method or means to accomplish an otherwise lawful end or result.”

There are many circumstances when one public official may have a meal with another public official to discuss matters of mutual interest. For example, an issue relating to education may be introduced before the Legislature, and it would not be improper for a school board member to have lunch with a legislator regarding that issue. The school board member may pay for the lunch or the legislator may pay for the lunch.

The purpose is to prevent influence peddling.

17. **Is it permissible for school board members or other school employees to gain free admission to school events (plays, sporting events, etc.) in their local districts? Can an employee be admitted free to an event at another school in his local system (e.g., employee is a teacher at the elementary school gaining admission to a high school football game in the district)?**

Section 36-25-1(33)(b)(8) states

“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:

8. Anything that is paid for by a governmental entity or an entity created by a governmental entity to support the governmental entity or secured by a governmental entity under contract, except for tickets to a sporting event offered by an educational institution to anyone other than faculty, staff, or administration of the institution.”

Section 36-25-1(33)(b)(12) states:

“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:

12. Payment of or reimbursement for actual and necessary transportation and lodging expenses, as well as waiver of registration fees and similar costs, to facilitate the attendance of a public official or public employee, and the spouse of the public official or public employee, at an educational function or widely attended event of which the person is a primary sponsor. This exclusion applies only if the public official or public employee meaningfully participates in the event as a speaker or a panel participant, by presenting information related to his or her agency or matters pending before his or her agency, or by performing a

ceremonial function appropriate to his or her official position; or if the public official's or public employee's attendance at the event is appropriate to the performance of his or her official duties or representative function."

School board members and other school employees may gain free admission to school events or plays, sporting events, etc. in their local school district, as employees are considered to be employees of that school district, and not of the individual school.

For a more detailed analysis, please see Advisory Opinion No. 2011-13.

18. Is it permissible for the Alabama High School Athletic Association to provide school board members free admission to championship athletic events?

The Alabama High School Athletic Association may provide school board members free admission to championship athletic events if a school in that school board member's district is participating in the event.

When a school board member or employee attends an event within their school district, it many times is in their official capacity, particularly with school board members.

Likewise, when a local school is participating in a championship event, it is not improper for school board members to receive free admittance, so that they may attend the event in their official capacity.

19. Are school board members elected or appointed after January 1, 2011, required to receive training under Act 2010-762?

Act 2010-762 places certain requirements on school officials and employees to receive training on Alabama's Ethics Law. These requirements have also raised a number of questions for their members.

Section 36-25-4.2(a)(4) states:

"(a) At the beginning of each legislative quadrennium, the State Ethics Commission shall provide for and administer training programs on the State Ethics Law for members of the Legislature, state constitutional officers, cabinet officers, executive staff, municipal mayors, council members and commissioners, county commissioners, and lobbyists.

(4) All municipal mayors, council members and commissioners, and county commissioners or member of any local board of education in office as of the effective date of this act shall obtain training within 120 days of such date. Thereafter, all

municipal mayors, council members and commissioners, and county commissioners shall obtain training within 120 days of being sworn into office. Training shall be available online and may be conducted either online or in person. Evidence of completion of the training shall be provided to the commission via an electronic reporting system provided on the official website. The scheduling of training opportunities for municipal mayors, council members and commissioners, and county commissioners shall be established by the Executive Director of the State Ethics Commission with the advice and assistance of the Alabama League of Municipalities and the Association of County Commissions of Alabama. Any provision of this section to the contrary notwithstanding, the training for county commissioners required by this subsection shall be satisfied by the successful completion of the 10-hour course on ethical requirements of public officials provided by the Alabama Local Government Training Institute established pursuant to Article 2, Chapter 3, Title 11, Code of Alabama 1975. The Alabama Local Government Training Institute shall quarterly provide written notice to the State Ethics Commission the names of those county commissioners completing the institute's program."

The law requires that members of local boards of education obtain training within 120 days of the effective date of the Act.

Thereafter, all school board members elected or appointed subsequent to the effective date of January 1, 2011, must receive the required training within 120 days of their having taken office.

As set out in the statute, the training may be conducted either on-line or in person.

20. **What is the penalty to the employee or official if he fails to obtain training required by Act 2010-762?**

Act 2010-762 contained no penalty provision for individuals failing to comply with the training requirements, other than a lobbyist may not be registered as a lobbyist if they fail to take the training.

Section 36-25-27(a)(2) states:

"(2) Any person subject to this chapter who violates any provision of this chapter other than those for which a separate penalty is provided for in this section shall, upon conviction, be guilty of a Class A misdemeanor."

Without a penalty provision, Act 2010-762 is meaningless. It is therefore the position of the Commission that an individual who knowingly fails to attend a training session as required, upon conviction, is guilty of a Class A misdemeanor.

CONCLUSION

Based on the facts as provided and the above law, AASB may provide a monthly stipend to its officers who serve on a voluntary basis to partially reimburse them for the time they devote to the organization.

AASB may pay for meals and accommodations of its officers and board of directors during gatherings, conferences, conventions, etc.

AASB may pay for the meals and accommodations of its committee members during gatherings, conferences, conventions, etc.

AASB may pay for meals and accommodations of AASB members for travel to out-of-state conferences and conventions when they are representing the Association and its members.

AASB may provide a nominal travel stipend for AASB members who travel out-of-state to conferences and conventions to represent the Association, when the stipend is for reimbursement of expenses and is not compensation.

It is permissible for AASB to pay for meals and accommodations for non-AASB members who have been invited to participate in AASB events in their official capacity.

AASB may award attendance prizes in the form of gift cards or free registration at its conferences and conventions, as these are door prizes.

Vendors may host dinner for school board members at AASB gatherings or other local gatherings, provided nothing is expected in return.

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

Vendors may only provide gifts to school board members of a de minimis value.

Vendors may only provide gifts to teachers, retired school employees or other school employees, of a de minimis value.

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.

School boards may enact a policy which allows students to contribute a de minimis amount towards a gift card from the class, provided the policy is reasonable, done in good faith and complies with the de minimis requirements in the Alabama Ethics Law.

The Board's attorney may buy lunch for school board members at a work session.

If the Board's attorney is a lobbyist, he may only expend \$25.00 per meal, per official, with an annual limit of \$150.00 per official.

If the Board's attorney works for a principal, he may only expend \$50.00 per meal, per official, with an annual limit of \$250.00 per official.

School board attorneys may not give individual Christmas gifts to school board members or other school employees, unless the gift is of a de minimis value.

A school board attorney or other vendors and individuals may give gift baskets, cheese trays and other consumable items to the school office for enjoyment by the staff.

Public officials, public employees, including school teachers and other school employees, may accept gifts of any value, when the gift is based on a friendship that transcends the public sector, as exemplified by a pre-existing friendship.

A school board attorney may only provide free baseball tickets to school board members and school employees, if it is an integral part of an overall event in which the board members or other school employees are participating.

School board members and other school employees may be provided tickets, if they pay the face value for that ticket.

There is nothing improper in a school board member buying a legislator lunch or vice-versa.

School board members and other school employees may gain free admission to school events (plays, sporting events, etc.) in their local district.

The Alabama High School Athletic Association may provide school board members free admission to Championship Athletic events, if those school board members have a school in their district participating in the event.

School board members elected or appointed after January 1, 2011, are required to receive Ethics training within 120 days of being sworn into office.

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An employee or official who knowingly fails to obtain Ethics training as required by Act No. 2010-762, upon conviction, may be found guilty of a Class A Misdemeanor.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on December 7, 2011.



Braxton L. Kittrell, Jr., Esq.
Chair
Alabama Ethics Commission