



ROBERT L. MCCURLEY, JR.

For more information about the Institute, contact Bob McCurley at (205) 348-7411 or visit www.ali.state.al.us.

Ethics Laws for Lawyers

The Alabama State Bar has been at the forefront in providing rules for ethical conduct to their members. Alabama's *Code of Professional Responsibility*, written in 1887, was the model used when the American Bar Association promulgated their rules for ethical conduct. Before one can be admitted to practice law in Alabama, one must pass a separate ethics exam. Annually, each lawyer must attend at least one hour of CLE ethics training to maintain their bar license. As a preventive measure, a lawyer may call or request an opinion of the state bar's general counsel on ethical questions. Violations of Alabama's *Rules of Professional Conduct* can result in suspension or disbarment.

Ethics Laws for Public Officials

In 1973, Alabama adopted the *Code of Ethics for Public Officials, Employees, Ala. Code* § 36-25-1. This act has been amended at least seven times.

In *Rampey v. State*, 415 So.2d 1185 (Ala. Crim. App. 1982) the court stated the legislature passed this chapter to prevent public officials from using their offices to reap private gains. The "conflicts of interest" referred to in this chapter are conflicts between an official's private interest and his official duties.

The very first speaker in the legislative orientation every four years is the director of the state Ethics Commission. Jim Sumner presents the legislators with a *Handbook for Public Officials* produced by the Ethics Commission and reminds them of their required filings under the "Fair Campaign Practices Act" concerning reporting their campaign funds and expenditures.

The law covers any person elected to public office in any level of government and any person appointed to a position in any level of government. It also sets requirements for lobbyists.

Most state employees know they have to file a Statement of Economic Interest if their base pay is at least \$50,000.

Lawyers are often asked by elected officials and other public officials if the public official can accept a trip, receive a gift, attend a function or do any of a number of things. Lawyers also are asked to become a lobbyist or advise lobbyists as to their responsibilities.

It has been said if you feel there may be an ethical problem then don't do it. However, the corollary is the part that gives people trouble. If you don't think there is an ethical problem there may still be a violation of the Ethics Act.

LEGISLATIVE WRAP-UP

Continued from page 145

The Alabama Law Institute and the legislative leaders who comprise the Legislative Council of the legislature conducted two seminars, one for legislative staff and the other for legislators, on "A Practical Guide to Legislative Ethics." A representative from the Center for Ethics in Government for the National Conference of State Legislatures joined Montgomery attorney Joe Espy of Melton, Espy & Williams and Mobile attorney Matt McDonald of Jones, Walker, Waechter, Poitevent, Carrere & Denegre to present a program on ethics from a different approach.

Espy, who represents primarily Democrats, and McDonald, who primarily represents Republicans, presented a list of scenarios or examples of ethical dilemmas for staff and legislators and gave them guidance on how to address these issues.

From a general standpoint, Espy and McDonald presented four "safe harbors" contained in the Ethics Act, § 36-25-1(31)(b):

1. Seasonal gifts: an annual aggregate amount of \$250 with any single gift being less than \$100. (Christmas, Easter, birthdays, possibly anniversaries, etc.);
2. Promotional items given by a company to everyone, generally, and not specifically public employees or public officials;
3. Meals of less than \$250 and the host is present at the meal. If the host is not present, then food and beverage are outside of the safe harbor. Sometimes, people refer to meals as hospitality and include tickets to sporting events, plays, etc., in the same category. The test is the same—less than \$250 per person with the host being present; and
4. Travel and lodging at association meetings, conferences, educational functions, etc.—the basic rule being that these activities must *not* extend beyond three consecutive days. Also, the cost per day per person should not be in excess of \$250.

Technically, one can get into a number of other subcategories. A couple of other things to remember:

1. In the event the costs for hospitality, sporting events, lodging, travel, etc. exceeds more than \$250 per day,

the host is required to report the entire amount to the Ethics Commission. This burden is upon the host, not the public employee or public official; and

2. Any hospitality, sporting event, etc. provided should not be continuous in nature.

Legislative employees in their session on "practical ethics," held prior to the session, took this very seriously with 95 percent of them being present while others may have attended the conference by listening to the broadcast through speakers in their office in the State House.

The legislators' "practical ethics" session was held the second week of the session in the House Chamber. Unlike previous ethics conferences where the law was read and explained, these conferences were addressed from the Socratic method of using fact situations and how the ethics law safe harbors applied to specific facts.

Lawyers, legislators and government officials do not start out by thinking, "I am going to violate an ethics rule." Sometimes, through past practices and the lack of specificity in the law, actions are taken that result in charges of ethical misconduct.

Legislators throughout the country, as well as in Alabama, are faced with situations in the gray areas on an everyday basis (just as lawyers are). If you are asked for advice outside the safe harbors, you may want to consult with the Alabama Ethics Commission, at (334) 242-4840 or www.ethics.alabama.gov.

Ethics Laws for Lobbyists

In her January 2009 article in the *State Legislators' Magazine*, Peggy Kerns, director of the NCSL's Center for Ethics in Government, quoted California lobbyist Greg Cook of the Governmental Affairs Consulting in Sacramento as saying, "Lobbying is truly the third house in the legislative process." She notes that in reaction to the onslaught of lobbyists in state legislatures, some states have gone so far as to enact a "no cup of coffee" rule, prohibiting legislators and staff from accepting anything of value.

Former Florida Speaker of the House John Thrasher, rather than run for another office after being term-limited out of the legislature, joined a lobbying firm and is thought of as a “super lobbyist.” He is quoted as saying, “Having been on both sides the best you can do as a lobbyist is to have a good academic argument and tell the truth.”

Legislators and lobbyists generally agree that scandals are usually the impetus for reforms. The biggest change in the past 25 years has been the decrease in corporate lobbyists and increase in contract lobbyists. If one is asked to lobby on behalf of a special interest group, one must register with the Alabama Ethics Commission. In 2008, there were 671 registered lobbyists. The Ethics Commission’s Web site is <http://ethics.alabama.gov/forms-lobby2.aspx> and provides guidelines for lobbyists/principals for compliance under the Alabama Ethics Law and sets forth the following top ten list of ways lobbyists can avoid violating the Alabama Ethics Law:

1. Don’t offer a public official or employee anything in exchange for official action. (Section 36-25-7, *Code of Alabama* 1975)
2. Register to lobby with the Ethics Commission by January 31st each year or within ten days of entering into any lobbying activity. (Section 36-25-18)
3. Modify your registration as necessary throughout the year by adding any new clients or principals. (Section 36-25-18(c))
4. File your quarterly statements in a timely manner. (Section 36-25-19)
5. Report any hospitality expenditures in excess of \$250 per calendar day which were expended on behalf of a public official or employee and members of their household. (Section 36-25-19(a)(1))
6. Report any financial transactions between you or your principal and a public official, candidate or members of their household in excess of \$500 in the prior quarter. (Section 36-25-19(a)(2))
7. Detail any loans or direct business associations or partnerships between you or your principal and a

public official, candidate or members of their household. (Section 36-25-19(a)(3)(4))

8. File notice of termination of lobbying activities in a timely manner. (Section 36-25-20)
9. Know that no lobbyist or principal can enter into a contingency fee arrangement having to do with the passage or defeat of any legislative action. (Section 36-25-23(c))
10. Be sure you know what is an allowed gift under the law. (Section 36-25-1(31)(b)(2))

Law Institute Bills

2009 Regular Session

A discussion of these bills can be found in the January 2009 and November 2008 editions of *The Alabama Lawyer*. Copies of the bills and the drafts with commentary are available on the Alabama Law Institute’s Web site.

1. Redemption from Ad Valorem Tax Sales
Representative Mike Hill (HB)
Senator Wendell Mitchell (SB)
2. Uniform Revised Lt. Partnership Act
Representative Cam Ward (HB)
Senator Roger Bedford (SB)
3. Uniform Satisfaction of Residential Mortgages
Representative James Buskey (HB)
Senator Myron Penn (SB)
4. Business and Nonprofit Entities Code
Representative Marcel Black (HB)
Senator Rodger Smitherman (SB)
5. Electronic Recording of Real Estate Records
Representative Marc Keahey (HB)
Senator Del Marsh (SB)

The Alabama Law Institute Web site (www.ali.state.al.us) has been revised. One may obtain Institute legislation (both the official bill and the ALI draft with Comments). One may also find any legislator as well as any bill pending in the legislature.

