

Alabama Ethics Commission
Summary of Advisory Opinion Issued October 7, 2020

Advisory Opinion No. 2020-04

In Advisory Opinion No. 2020-04 (McDonald/Robichaux), the Alabama Ethics Commission (“Commission”) advised that when an organization employs or hires a lobbyist, that organization satisfies the Commission’s administrative registration and reporting requirements for principals when: (1) the organization is listed as the principal and authorizes a lobbyist’s registration; (2) a representative of the principal signs on behalf of the principal; and (3) the organization files quarterly reports as the principal.

The request for this Advisory Opinion came on behalf of the Alabama Council of Association Executives (“ACAE”) and Community Foundation of Greater Birmingham (“Foundation”). Many of ACAE’s members work with organizations that are principals under the Ethics Act, and the Foundation itself is a principal. Ala. Code § 36-25-1(24) defines “principal” as “[a] person or business which employs, hires, or otherwise retains a lobbyist. A principal is not a lobbyist but is not allowed to give a thing of value.”

Pursuant to Ala. Code §§ 36-25-18 and -19, principals are required to submit certification statements for lobbyist registrations and quarterly statements of lobbying activities. Historically, the Commission has allowed an organization that is a principal to be listed as the principal on these required registrations and statements, and has not required any individual within the organization to file such forms as well.¹ However, questions arose regarding the scope of the Ethics Act’s definition of principal—and the registration and reporting requirements attendant to being a principal—in the wake of the Alabama Supreme Court’s decision in *Ex parte Hubbard*, No. 1180047, 2020 WL 1814587 (Ala. Apr. 10, 2020).

In *Hubbard*, the State of Alabama argued that a private Alabama businessman fell under the Ethics Act’s definition of principal simply because he was a member of the board of directors and the executive committee of an entity that is a principal. *See Ex parte Hubbard*, 2020 WL 1814587, at *8. The Alabama Supreme Court rejected that argument and determined that simply being a member of a board of directors of an entity which employs, hires, or otherwise retains a lobbyist does not automatically make someone a principal under the Ethics Act. *Id.* at *9. The Court left open the possibility that an individual who serves on the board of a principal could also be deemed a principal under certain scenarios—stating “there is no ‘bright-line’ rule that a member of the board of an entity that has employed, hired, or otherwise retained a lobbyist cannot be considered a ‘principal’”—but that determination would be made on a fact-driven case-by-case basis depending on whether the individual is involved with the employing, hiring, or otherwise retaining of the entity’s lobbyist. *Id.* at *10. As the Court put it, “the key to whether an individual fits within the definition of ‘principal’ is the activity of the person, not the person’s title, position, or job description.” *Id.* (emphasis in original).

¹ For example, see the Foundation’s most recent Principal’s Quarterly Statement of Lobbying Activities [here](#) and its most recent Principal’s Statement for Lobbyist Registration [here](#). Both forms list the Foundation, rather than any individual at the Foundation, as the “principal.”

ACAЕ’s and the Foundation’s request for an Advisory Opinion did **not** ask the Commission to provide objective guidance or standards based on the Court’s reasoning in *Hubbard* that would enable them to definitively determine who within an organization is a principal. Instead, the request focused on whether the Court’s decision in *Hubbard* affected the Commission’s historical approach with respect to compliance by an organization that is a principal with the Ethics Act’s registration and reporting requirements. The Commission concluded the *Hubbard* decision did not change its approach to those administrative requirements:

As a practical matter, therefore, and only for purposes of compliance with Ala. Code §§ 36-25-18 and 19, principals and lobbyists can continue to file and report as they have historically. This decision speaks only to administrative filing requirements pending further clarification on the definition of “principal,” and should in no way imply that the Commission has determined that the business entity and named filer are the only possible “principals” for purposes of Ala. Code § 36-25-5.1,^[2] as the requestors concede. This opinion merely continues the Commission’s historic approach to filing and reporting for the time being that only the organization be listed as the principal for the administrative reporting requirements of Ala. Code §§ 36-25-18 and 19.

By a vote of 5-0, the Commission unanimously adopted Advisory Opinion No. 2020-04. A copy of Advisory Opinion No. 2020-04 can be accessed on the Commission’s website [here](#).

² Ala. Code § 36-25-5.1 generally prohibits lobbyists and principals from offering or providing a thing of value to public employees, public officials, and the family members of public employees and public officials, and it prohibits public employees, public officials, and the family members of public employees and public officials from soliciting or receiving a thing of value from a lobbyist or principal.

Advisory Opinion No. 2020-05

In Advisory Opinion No. 2020-05 (England), the Commission addressed the “PAC-to-PAC ban” under Ala. Code § 17-5-15(b), specifically whether it is permissible for a federally-registered political action committee (“PAC”) to contribute funds to an Alabama-based PAC. The Commission concluded that under the facts presented, such a contribution is prohibited by the PAC-to-PAC ban.

The request for this Advisory Opinion came from Christopher J. England, Alabama State Representative and Chairman of the Alabama Democratic Party (“Party”). The Party is considered a PAC under 17-5-2(a)(13).³ According to the facts of the Advisory Opinion, the Party solicits contributions to fund operations of the Party and fund electioneering communications on behalf of candidates and campaigns. The Party maintains separate bank accounts for state and federal electioneering activities, and Mr. England questioned whether it is permissible for a federally-registered PAC that complies with all regulations of the Federal Election Commission (“FEC”) and federal laws to contribute funds to the Party that are then deposited into the Party’s state accounts. The Advisory Opinion notes that although the funds at issue were proposed to ultimately be deposited into a state account of the Party, the funds would not be used to advocate for the election or defeat of a specific candidate for state or local office. Rather, the funds would be used “in connection with activities that cover the non-federal share of activities in situations where the [FEC] permits a party to use a combination of federal and non-federal funds to pay for its administrative and other get-out-the-vote costs that are not for the direct benefit of any candidate.”

The PAC-to-PAC ban generally makes it unlawful for a PAC to make a contribution, expenditure, or any other transfer of funds to any other PAC, except for contributions, expenditures, or a transfer of funds made by a PAC to a candidate’s Principal Campaign Committee. *See* Ala. Code § 17-5-15(b). The Advisory Opinion states that if the proposed contribution was done for the purpose of federal campaigning only, and not state or local campaigning, then federal law would preempt the state’s interest in the transfer, and the proposed contribution would not be subject to the PAC-to-PAC ban. Under the facts presented, however, the proposed contribution from the federally-registered PAC to the Party was to be used, at least in part, for state campaign activity benefitting state candidates. Thus, according to the Commission, the proposed contribution was impermissible pursuant to the PAC-to-PAC ban.

The Commission adopted this Advisory Opinion by a vote of 4-0, with one abstention. A copy of Advisory Opinion No. 2020-05 can be accessed on the Commission’s website [here](#).

³ Ala. Code 17-5-2(a)(13) defines a PAC as follows:

POLITICAL ACTION COMMITTEE. Any committee, club, association, political party, or other group of one or more persons, whether in-state or out-of-state, which receives or anticipates receiving contributions and makes or anticipates making expenditures to or on behalf of any Alabama state or local elected official, proposition, candidate, principal campaign committee or other political action committee. For the purposes of this chapter, a person who makes a political contribution shall not be considered a political action committee by virtue of making such contribution.