CHAPTER 2
ALABAMA

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§ 2.1 Overview

The Code of Ethics for Public Officials, Employees, etc. (the Ethics Law), Ala. Code § 36–25–1 et seq., provides the statutory basis for the regulation of lobbyists and their principals in Alabama. Although the prior provisions of the Ethics Law imposed few restrictions on lobbying activities, in June of 1995 the Alabama Legislature enacted, and the Governor approved, an extensive amendment of the Ethics Law which imposes new requirements on lobbying activities, including, without limitation, restrictions regarding lobbying by former public officials, detailed registration requirements and stricter reporting guidelines.

The Fair Campaign Practices Act (FCPA), Ala. Code § 17–22A–1 et seq., passed in 1988, regulates campaign finance in Alabama. The Act has been the subject of several lawsuits impacting primarily on candidates rather than political committees (hereinafter political committees, both corporate-sponsored and others, will be severally referred to as PACs) and many Attorney General Opinions, the most important of which will be discussed below. An extensive amendment to the FCPA was passed by the Legislature in the 1993 Special Session, but was vetoed by the Governor. Again, no attempt will be made to discuss how the proposed changes impact on current law, since the future of these "reform" efforts is uncertain.

Alabama law (both the corporation code and the FCPA), unlike federal statutes regulating campaign contributions, allows limited political contributions by corporations out of the corporate treasury. Moreover, Alabama corporations may establish and support separate, segregated funds (also commonly called PACs) as long as the contribution limits applicable to corporations are observed. (See § 2.84.)

The State Ethics Commission has primary responsibility for the enforcement of the Ethics Law, while the Secretary of State (for statewide elections) and the various probate judges (for local elections) have responsibility for enforcing the Fair Campaign Practices Act. The Ethics Commission has issued numerous advisory opinions pertaining to lobbying activities, but under current law the Secretary of State is not authorized to issue such opinions with respect to the Fair Campaign Practices Act. Rather, the Secretary of State and other state officials routinely request guidance from the Attorney General of Alabama who, as mentioned above, has issued many, and some surprising, interpretations of the Fair Campaign Practices Act.

I. LOBBYISTS AND LOBBYING

A. Definitions

§ 2.11 Lobbying

Ala. Code § 36–25–1(17) defines "lobbying" as follows:

> The practice of promoting or opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enact-

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ment, promulgation, modification, or deletion of regulations before any regulatory body; provided, however, that providing public testimony before a legislative body or regulatory body or any committee thereof shall not be deemed lobbying.

§ 2.12 Lobbyist

Ala. Code § 36–25–1(18) defines a "lobbyist" as follows:

a. The term lobbyist includes any of the following:

1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.

2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.

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

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

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

§ 2.13 Principal

Although the term "principal" was not heretofore defined by the legislature, the newly amended provisions of the Ethics Law and, in particular, Ala. Code § 36–25–1(22), defines "principal" as follows:

> A person or business which employs, hires, or otherwise retains a lobbyist. Nothing in this chapter shall be deemed to prohibit a principal from simultaneously serving as his or her own lobbyist.

§ 2.14 Exempt Activities

Ala. Code § 36–25–1(18)b establishes the following exemptions from the Ethics Law:

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

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

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

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

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

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

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

In addition to the above statutory exemptions, the Alabama Ethics Commission has previously issued several pre–1995 amendment advisory opinions providing qualified exemptions for store managers who have had isolated contacts with their duly elected legislators (Advisory Opinion No. 59, September 25, 1974); isolated contact citizens either individually or as a volunteer member of an organization, such as the PTA, before a legislative committee to either support or oppose particular legislation, including promoting or opposing executive approval of legislation; and promoters who are invited by legislators and who do not perform any lobbying efforts other than answering questions and providing information (Advisory Opinion No. 952, August 15, 1995). The continued viability of these nonstatutory exemptions is in question as a result of the enactment of specific statutory exemptions.

B. Registration, Record Keeping and Reporting Requirements

§ 2.21 Registration—Principals

(A) Principals employing lobbyists are not required to register separately from the lobbyists. Rather, Ala. Code § 36–25–18, which requires lobbyists to register, provides that the lobbyist's written registration shall contain a statement signed by the principal that the principal has read the registration, knows its contents, and has authorized the registration of the lobbyist on the principal's behalf. The principal's statement is part of the one page

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lobbyist registration form (see § 2.42). There is no registration fee for principals. Substantial changes in circumstances may trigger supplemental reporting.

(B) The requirement to file a Notice of Termination of Lobbying Activities is imposed on the lobbyist. There is no such requirement for a principal to file a Notice of Termination of Lobbying Activities. Ala. Code § 36–25–20.

§ 2.22 Registration—Lobbyists

(A) Every person employed or retained as a lobbyist must register by filing a form prescribed by the Commission (see § 2.42) no later than January 31 of each year or within 10 days after the first undertaking requiring registration. The registration is filed with the State Ethics Commission. The annual fee for lobbyists, except public employees who are lobbyists, is $100. Substantial changes in circumstances may trigger supplemental reporting.

(B) A lobbyist who ceases lobbying must file a statement with the Ethics Commission acknowledging termination of activities immediately upon such cessation. A form has been provided by the State Ethics Commission. (See § 2.42.) Upon termination, the lobbyist filing a Notice of Termination must file the reports required under Ala. Code § 36–25–18 (registration or supplemental registration) and Ala. Code § 36–25–19 (lobbyists' monthly reports) for any reporting period during which he or she was registered. Ala. Code § 36–25–20(b).

§ 2.23 Record Keeping—Principals

There are no statutory requirements for a principal to maintain records.

§ 2.24 Record Keeping—Lobbyists

There are no statutory requirements for a lobbyist to maintain records.

§ 2.25 Reporting Requirements—Principals

As provided by Ala. Code § 36–25–19, every principal employing a lobbyist must file a report provided by the Alabama Ethics Commission no later than January 31, April 30, July 31, and October 31 for each preceding calendar quarter which contains at least the following information:

1. The cost of those items excluded from the definition of a thing of value which are described in detail in Ala. Code § 36–25–1(30)b. (e.g., campaign contributions, season gifts of an insignificant value, etc.) and which are expended within a 24–hour period on a public official, public employee, and members of his or her respective household in excess of $250 with the name(s) of the recipient(s) and the date of the expenditure.

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2. The nature and date of any financial transaction between the public official, candidate, or member of the household of such public official or candidate and the lobbyist or principal of a value in excess of $500 in the prior quarter, excluding those financial transactions which are required to be reported by candidates under the Alabama Fair Campaign Practices Act.

3. A detailed statement showing the exact amount of any loan given or promised to a public official, candidate, public official or candidate.

4. A detailed statement showing any direct business association or partnership with any public official, candidate, or members of the household of such public official or candidate; provided, however, that campaign expenditures shall not be deemed a business or partnership.

(B) A detailed statement of any money loaned or promised to legislators or anyone on their behalf; a statement detailing the extent of any direct business association or partnership with any current member of the Legislature or public official or employee; and a list of legislation by category supported or opposed by the principal or by any person retained or employed by the principal to appear on his behalf or by any other person appearing on his behalf.

Although not required by the statute, the form promulgated by the Alabama Ethics Commission (see § 2.42) requires the principal to list all lobbyists employed or retained by the principal.

§ 2.26 Reporting Requirements—Lobbyists

Each lobbyist is required to file a sworn statement with the Alabama Ethics Commission between the first and fifteenth day of each month succeeding a month in which the Legislature is in session covering activities during the previous month. The report must be written, verified and contain the same information required of principals. Such information includes:

(A) All amounts received or expended directly or indirectly for the purpose of carrying on lobbying activities in the following categories:

(1) Less than $1,000;

(2) $1,000 through $3,000; or

(3) More than $3,000.

The lobbyist need not report amounts received by the lobbyist for personal living expenses nor amounts received that are reportable as income to the lobbyist for federal tax purposes unless the lobbyist's contract of employment provides that amounts received for such expenses or such income may or shall be used for carrying on lobbying activities;

(B) A detailed statement of any money loaned or promised legislators or anyone on their behalf;

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(C) A statement detailing the extent of any direct business association or partnership with any current member of the Legislature or public official or employee; and

(D) A list of legislation by categories supported or opposed by the lobbyist, by anyone retained or employed by the lobbyist to appear on his behalf, or by any other person appearing on his behalf.

A lobbyist form for reporting monthly lobbying activities has been promulgated by the Alabama Ethics Commission (see § 2.42).

C. Prohibited Practices and Penalties

§ 2.31 Overview

The Alabama Ethics Law does not contain any general prohibitions applicable only to lobbyists or their principals other than a ban on contracts contingent on passage or defeat of legislation. Ala. Code § 36–25–19(b)(6). Accordingly, the primary statutory restraints on the activities of lobbyists and principals are those applicable to the general public, and restrictions imposed on public officials and employees by various provisions of the Alabama Ethics Act. See also § 2.51.

§ 2.32 Prohibited Practices—Principals

(a) Ala. Code § 36–25–7, provides as follows:

> (a) No person shall offer or give to a public official or public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive a thing of value for the purpose of influencing official action.
>
> * * *
>
> (c) No person shall offer or give a family member of the public official or family member of the public employee a thing of value for the purpose of influencing official action.

Ala. Code § 36–25–23(c) also provides that principals may not accept compensation or enter into contracts to provide lobbyists services which is contingent upon the passage or defeat of legislation.

§ 2.33 Prohibited Practices—Lobbyists

(A) Ala. Code § 36–25–7, provides as follows:

> (a) No person shall offer or give to a public official or public or public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive a thing of value for the purpose of influencing official action.
>
> * * *

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(c) No person shall offer or give a family member of the public official or family member of the public employee a thing of value for the purpose of influencing official action.

Although the Alabama Ethics Commission has issued an Advisory Opinion stating that under former Ala. Code § 36–25–6, a lobbyist may pay the cost of lunch and golf fees and later all expenses connected with a three day golfing weekend for a legislator and the legislator's spouse without violating the Alabama Ethics Law, Advisory Opinion No. 531, April 29, 1991, this opinion may be called into question under the new provisions of Ala. Code §§ 36–25–1(30) and 36–25–6.

Alabama Code § 36–25–23(c) further provides that a lobbyist may not accept compensation for, or enter into a contract to provide lobbying services contingent upon the passage or defeat of legislation.

§ 2.34 Prohibited Practices—Exceptions

Ala. Code § 36–25–1(32)b. provides that a public official may accept the following, provided that no particular course of action is required as a condition of receipt:

1. CAMPAIGN CONTRIBUTIONS
2. SEASONAL GIFTS—The value of seasonal gifts must be less than $100 per gift, with an annual aggregate value of less than $250 per donor.
3. HOSPITALITY ON SOCIAL OCCASION—Hospitality includes food and beverage where the provider is present; lodging in the continental United States and Alaska incidental to the social occasion; tickets to social and sporting events if the hospitality does not extend beyond three consecutive days and is not continuous in nature. Although there are some exceptions regarding qualified charities, there are reporting requirements where the value of the hospitality exceeds $250 on any one day.
4. REASONABLE TRANSPORTATION, FOOD AND BEVERAGE—However, the provider must be present; the lodging expenses in the continental United States and Alaska must be provided in conjunction with an educational or informational purpose together with the hospitality associated therewith; the hospitality provided must constitute less than 50 percent of the time spent at the event. There are reporting requirements when the aggregate value of these expenditures exceeds $250 per year for the recipient and members of his or her household.
5. **PROMOTIONAL ITEMS**—Items commonly distributed to the general public and food and beverage of a nominal value.

In addition, the Ethics Law does not require disclosure of personal gifts from family members and relatives or disclosure of gifts received through inheritance.

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§ 2.35 Enforcement and Penalties

The Ethics Commission (see § 2.41) has primary responsibility for enforcing provisions of the Ethics Law applicable to lobbyists and lobbyists' principals and is authorized to issue advisory opinions.

The Ethics Committee may refer cases to the Attorney General or the appropriate district attorney if the Commission deems the violation serious enough to warrant prosecution. Prosecutions for violations of the Ethics Law may be initiated and prosecuted by the Attorney General of the state or by a district attorney having jurisdiction of the offense.

The penalties for violating some provisions of the Ethics Law have recently been changed. A person who intentionally violates the Ethics Law (other than the requirements of financial and lobbying disclosure) is guilty of a Class B felony. All other violations of the Ethics Law, including, without limitation, knowingly violating the disclosure requirements, knowingly making or transmitting a false report, making false statements to the Ethics Commission or its employees, intentionally violating secrecy requirements, and intentionally failing to disclose information required by the Ethics Law, constitute Class A misdemeanors. Ala. Code § 36–25–26.

Any person who knowingly or willfully violates any disclosure requirement, however, is guilty only of a misdemeanor, and the punishment is limited to a fine of $10 per day for each day the appropriate disclosure statement is delinquent, not to exceed $1,000 annually. However, the fine provision has not been enforced by the Ethics Commission.

For those minor violations which may be resolved by the Commission, the Commission may levy an administrative penalty not to exceed $1,000. In addition to administrative penalties, the Commission is required to order restitution in the amount of any economic loss to the governmental entity having suffered the economic loss. For those minor violations where it is agreed by the Commission, the respondent and the Attorney General or appropriate district attorney that the matter will be handled administratively, criminal prosection is precluded.

D. Miscellaneous

§ 2.41 Where to Go for Help

Street Address

Alabama State Ethics Commission
100 North Union Street, Suite 104
Montgomery, AL 36104
(334) 242–2997
Facsimile (334) 242–0248

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Mailing Address

Alabama State Ethics Commission
P.O. Box 4840
Montgomery, AL 36103–4840

§ 2.42 Forms

The following forms are used in Alabama:

Lobbyists Registration Form
Principal's Form—Monthly Statement of Lobbying Activities
Lobbyist Form—Monthly Statement of Lobbying Activities
Statement of Termination of Lobbying Activities
Supplement to Lobbyist Registration Form

II. OTHER CONSIDERATIONS WHEN DEALING WITH PUBLIC OFFICIALS AND PUBLIC EMPLOYEES

§ 2.51 Prohibited Practices—General Guidelines

The Alabama Ethics Act prescribes rules of conduct for public officials and employees of the state and its political subdivisions and their instrumentalities. Generally, the rules of conduct are applicable only to public officials and employees, but some impose prohibitions on private persons or businesses that interact with them. For example, Ala. Code § 36–25–7 provides that no person shall offer or give to a public official or employee or his family anything of value for the purpose of influencing official action. Furthermore, Ala. Code § 36–25–12 provides that no person shall offer or give to a member or employee of a governmental agency, board or commission that regulates a business with which the person is associated, anything of value including a promise of future employment or a favor or service for the member or employee associated with the regulatory agency, board or commission. Social entertainment expenses, however, are not deemed to be a thing of value under Ala. Code §§ 36–25–6 and 36–25–12. The Alabama Ethics Commission has issued many advisory opinions dealing with these sections that should be reviewed prior to offering anything of value to a public official or employee.

§ 2.52 Employing Former Public Officials

The Ethics Law provides that, for a period of two years after leaving state employment, public employees may not serve for a fee as a lobbyist or represent clients, including his or her former employer before the board, agency, commission, department or legislative body, of which he or she is a former employee or member. Ala. Code § 36–25–13. Furthermore, Ala. Code § 36–25–13 provides that public officials, directors, assistant directors, department or division chiefs, pur-

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chasing or procurement agents having the authority to make purchases, and any person who participates in the negotiation or approval of contracts, grants, or awards, shall not enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which the person was a member for a period of two years after leaving membership or employment of such governmental agency. Public officials and employees who personally participated in the direct regulation, audit or investigation of a private business, corporation, partnership or individual may not solicit or accept employment with such private business, corporation, partnership or individual for a period of two years of his or her departure from such employment.

Moreover, for a period of two years after termination of office or employment, former public officials and employees may not act as an attorney for any person other than himself or herself or the state, or aid, counsel, advise, consult or assist in representing any other person, in connection with any judicial proceeding or other matter in which the state is a party or has a direct substantial interest and in which the former official or public employee participated personally and substantially as a public official or employee or which was within or under the public official or public employee's official responsibility as an official or employee. This prohibition also extends to all judicial proceedings and other matters in which the state is a party or has a direct interest, whether arising during or subsequent to the public official or public employee's term of office or employment. Ala. Code § 36–25–13.

It should be noted that no former member of the House of Representatives or the Senate of the State of Alabama shall be extended floor privileges of either body if they are performing lobbying activities; otherwise, there are no restrictions on former legislators. Ala. Code § 36–25–23.

Finally, Ala. Code § 36–25–26 prohibits a person from knowingly or willfully making a false statement or misrepresentation of facts or delivering a false document to a member of the legislative or executive branches for the purposes of influencing legislation.

§ 2.53 Employing Former Public Employees

See discussion in § 2.52.

§ 2.54 Where to Go for Help

Street Address

Alabama State Ethics Commission
100 North Union Street, Suite 104
Montgomery, AL 36104
(334) 242–2997
Facsimile (334) 242–0248

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