



# STATE OF ALABAMA ETHICS COMMISSION



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December 7, 2011

## ADVISORY OPINION NO. 2011-13

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and  
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Use Of Office For Personal Gain/School  
Board Members And Other School System  
Employees Gaining Free Admission To  
School Events In Their Local District

School board members and employees of  
the school district may gain free admission  
to plays, sporting events and other school  
events at any school in their local district, as  
it is the school district and not the  
individual school that is considered the  
institution for purposes of the Ethics Law.

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Dear Ms. Howell and Dr. Mackey:

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.

The School Superintendents of Alabama (“SSA”) is a professional, non-profit organization comprised of Alabama superintendents and school system leaders. SSA provides a unified voice for school superintendents, promotes public education and is a leading advocate for children in this state.

AASB’s and SSA’s members are all considered “public officials” and/or “public employees” as those terms are defined by Act 2010-764. Both organizations have received multiple inquires from its members regarding the impact of the new Ethics Law on common school practices. In particular, a major concern that has been raised relates to whether individual boards of education can provide free admission to athletic and other events for its members and school employees within the local district. The specific questions are as follows:

1. 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?
2. Can an employee be admitted free to an event at another school in his local district (e.g., employee is a teacher at the high school gaining admission to a middle school basketball game in the same district)?

To the extent it is helpful, they would like to share their interpretation as we consider these questions.

They believe it is common and appropriate for school board members and school employees to attend school events in their local districts to show support for the students participating in such activities. Their members believe this is an integral part of a board

member's responsibilities and an important way to engage with the very constituents they serve. The same is true for school employees. While they are not required to attend extracurricular events, they believe it to be equally important that they do so whenever possible. They believe the presence of school employees at an event such as a football game or a play not only demonstrates the employee's support of the participating students, but has the added benefit of being a deterrent to misbehavior. This is a factor that likely distinguishes local boards of education on the K-12 level from collegiate level events.

Based on their review of the relevant statute, as amended during the 2010 Special Session, the scenarios presented above would be permissible under the law. A brief review of the term "thing of value" and the relevant exception thereto may be helpful:

§36-25-1(33) THING OF VALUE.

- a. Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event, unsecured loan, other than those loans and forbearances made in the ordinary course of business, reward, promise of future employment, or honoraria or other item of monetary 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:
  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.

(Emphasis added).

It is clear that the cost of admission to an extracurricular event such as a play, a concert or an athletic event would be considered a "thing of value" as that term is broadly defined at *Ala. Code* §36-25-1(33)(a). However, they further believe that permitting free admission to board members or employees is permitted by the above-quoted exception, *Ala. Code* §36-25-1(33)(b) (8). Such an event would be considered a thing "paid for by a governmental entity...to support the governmental entity...except for tickets to a sporting event offered by an educational institution to anyone other than faculty, staff, or administration of the institution." *Id.* While it is clear by the drafting of the statute that public officials and employees from outside the institution

could not receive athletic event passes, in particular, it is equally clear that the Legislature intended those closely associated with the institution to be permitted to receive these passes.

This raises the question of whether the “institution” is the individual school facility or the board of education, and bears directly on whether employees can receive admission to events district-wide or whether only employees of a particular school may do so. That is, can an employee at the high school receive free admission to a basketball game at the middle school? While the term “institution” is not defined in the statute, they suspect that the purpose of this statute was to address certain concerns on the collegiate level where the term “institution” has a more certain meaning. However, for their purposes, they do believe the “institution” refers to the board as opposed to the individual school facility. It is well-settled under state and federal law that the only relevant legal entity for purposes of employment, contracts and other actions is the board of education. For example, an employee is not hired by an individual school, but can be transferred to various schools within a district. *See* Act 2011-270, §7, *et seq.*; *See also e.g. Cooley v. Board of School Com’rs of Mobile County*, 2009 WL 424593 (S.D.Ala.)(recognizing that only school boards can cancel employment contract); *Godby v. Montgomery County Bd. Of Educ.*, 996 F.Supp. 1390 (M.D.Ala. 1998)(school board and its employees constitute a single entity); *Hilliard v. Ferguson*, 30 F.3d 649 (5<sup>th</sup> Cir. 1994)(same). If the “institution” is the local board of education as opposed to a single school within it, free admission to these events appears to be an exception to “thing of value” for all local board employees.

AASB, SSA and their members are grateful for the opportunity to pose these questions to the Commission. They consider our guidance invaluable in their efforts to assist their members in navigating the requirements under these new laws.

The Alabama Ethics Law, Code of Alabama, 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 36-25-1(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 36-25-5(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."

When the law was amended in December 2010, free tickets and passes to sporting, social and recreational events were removed as exceptions to the definition of a thing of value, and became things of value.

Section 36-25-1(33)(b)(8) allows tickets to sporting events to be offered by an educational institution to their faculty, staff and administration, but not to outside parties. All others must pay face value.

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.”

It is common in the local school systems around the State of Alabama for the school district, itself, to be considered the institution and not the individual school.

For example, a teacher at the middle school receives a paycheck from that school system and not from the individual school. He or she is subject to being transferred to another school in the district, with no change to their benefits, method of payment, etc. In other words, that teacher works for the school system and not that individual school.

Therefore, it does not violate the Ethics Law for school board members or other employees of the school system to receive free admission to events at any school within that school system.

For example, employees of the Montgomery County Board of Education may receive free passes to events at all the schools within the system, from elementary through high school. Likewise, for the Jefferson County Board of Education, etc.

Based on the facts as provided and the above law, school board members and employees of the school district may gain free admission to plays, sporting events and other school events at any school in their local district, as it is the school district and not the individual school that is considered the institution for purposes of the Ethics Law.

### CONCLUSION

School board members and employees of the school district may gain free admission to plays, sporting events and other school events at any school in their local district, as it is the school district and not the individual school that is considered the institution for purposes of the Ethics Law.

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**AUTHORITY**

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



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