

**STATE OF TENNESSEE**

OFFICE OF THE  
ATTORNEY GENERAL  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

May 8, 2001

Opinion No. 01-073

“TDOT Appreciation Day”

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**QUESTIONS**

An engineering firm, DBS & Associates Engineering, Inc., the City of Clarksville Street Department, the Clarksville/Montgomery County Economic Development Council, Budweiser of Clarksville, the Montgomery County Highway Department, and Clarksville Transit Systems are sponsoring a “TDOT Appreciation Day Golf Scramble.” It appears that the event will offer lunch, dinner, and golf facilities, free of charge, to guests. The request indicates that invitations have been extended to officials in the Tennessee Department of Transportation (“TDOT”) and officials in the Department of Environment and Conservation.

1. Does this event violate Tenn. Code Ann. § 3-6-114, prohibiting a lobbyist or employer of a lobbyist from providing a gift, directly or indirectly, to an official in the executive branch or his or her immediate family?

2. Under Tenn. Code Ann. § 12-3-106, no employee of any state department charged with responsibility for initiating requisitions of purchases of materials may accept any gift from any person to whom such contract may be awarded. Would employees of TDOT violate this provision by attending this event?

**OPINIONS**

1. Based on the facts as represented to state officials, attendance at this event would not violate Tenn. Code Ann. § 3-6-114 because neither of the two firms actually contributing to the event is a lobbyist or employs a lobbyist.

2. By its terms, this statute applies to the sale of materials, supplies, or equipment. One of the two firms actually contributing to the event is an engineering firm that provides professional services, not materials, supplies, or equipment. The other deals in a commodity that the State does not purchase. Further, based on the facts as represented to state officials, neither of the two firms has a contract with the Department of Transportation or the Department of Environment and Conservation to which this provision applies. Attendance at the event, therefore, would not violate Tenn. Code Ann. § 12-3-106.

## ANALYSIS

This opinion concerns the legality of an event sponsored by an engineering firm, DBS & Associates Engineering, Inc., the City of Clarksville Street Department, the Clarksville/Montgomery County Economic Development Council, Budweiser of Clarksville, the Montgomery County Highway Department, and Clarksville Transit Systems. The request indicates that sponsors have invited officials in the Tennessee Department of Transportation (“TDOT”) and officials in the Tennessee Department of Environment and Conservation. The event is called “TDOT Appreciation Day Golf Scramble.” It appears that the event will offer lunch, dinner, and golf facilities, free of charge, to guests.

We have discussed this event with officials in TDOT and with a representative of the engineering firm. We are informed that only the engineering firm and Budweiser of Clarksville are actually paying for or contributing to the event. The engineering firm has told TDOT that it is not a lobbyist and does not employ a lobbyist and that Budweiser of Clarksville is not a lobbyist and does not employ a lobbyist within the meaning of the lobbying laws. Further, the engineering firm has told TDOT representatives that Budweiser of Clarksville has no contracts for the sale of materials for the use of TDOT. TDOT has contracted with the engineering firm for professional services, but not for the purchase of materials. A representative of this Office was informed that neither the engineering firm nor Budweiser of Clarksville has any contract with the Department of Environment and Conservation. Officials in the Department of Environment and Conservation confirmed this.

### 1. Lobbying Laws

Your first question is whether this event violates Tenn. Code Ann. § 3-6-114. Subsection (a) of this statute provides:

No lobbyist or employer of a lobbyist may provide a gift, directly or indirectly, to a candidate for public office, official in the legislative branch, official in the executive branch, or immediate family of such candidate or official.

Under the statute, “lobby” means to communicate, directly or indirectly, with any official in the legislative branch or executive branch, *for pay or for any consideration*, for the purpose of influencing any legislative action or administrative action. Tenn. Code Ann. § 3-6-102(12). “Employer of a lobbyist” means:

. . . any person or entity that employs or retains another person to lobby. In the event that a corporation, labor organization, or membership organization employs or retains a person to lobby, employees, officers, directors, or members of such entity shall not be deemed to be an

employer of such lobbyist.

Tenn. Code Ann. § 3-6-102(21). “Official in the executive branch” means:

. . . the governor, any member of the governor’s staff, any member or employee of a state regulatory commission, including, without limitation, directors of the Tennessee regulatory authority, or any member or employee of any executive department or agency or other state body in the executive branch.

Tenn. Code Ann. § 3-6-102(15). The Registry of Election Finance has the jurisdiction to administer and enforce this statutory prohibition. Tenn. Code Ann. § 2-10-205(2). We have sent a copy of the materials you submitted to that agency. This Office represents that agency, and is available to provide it with any advice it may request regarding the interpretation and applicability of that statutory scheme. Based on the facts as represented to state officials, however, it appears that neither TDOT employees nor employees of the Department of Environment and Conservation would violate Tenn. Code Ann. § 3-6-114(a) by attending this function. As noted above, it appears that neither the engineering firm nor Budweiser of Clarksville is a lobbyist or an employer of a lobbyist within the meaning of this statutory scheme.

## 2. Conflict of Interest Statutes

The second question is whether employees of TDOT or the Department of Environment and Conservation would violate Tenn. Code Ann. § 12-3-106 by attending this function. That statute provides:

No officer or employee of the department of general services, nor any member of the board of standards, nor any head of any state department, institution or agency, nor any employee of any state department, institution or agency charged with the responsibility of initiating requisitions, shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract for the *purchase of materials, supplies, or equipment for the state of Tennessee* may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation, or contract for future rewards or compensation.

(Emphasis added). This statute does not apply to or govern contracts for the construction of highways, bridges, and public buildings. Tenn. Code Ann. § 12-3-102. Further, this provision only applies to contracts for the purchase of materials, supplies, or equipment. As noted above, neither the engineering firm nor Budweiser of Clarksville has a contract for the sale of materials, supplies, or equipment to TDOT. Further, neither the engineering firm nor Budweiser of Clarksville has any contract with the Department of Environment and Conservation. By its terms, the statute also applies to gifts from any person to whom a contract for the purchase of materials, supplies, or equipment “may” be awarded. But the engineering firm

provides engineering services and does not sell materials, supplies, or equipment. Further, Budweiser of Clarksville deals in a commodity that the State does not purchase. Therefore, Tenn. Code Ann. § 12-3-106 does not prohibit employees of TDOT or the Department of Environment and Conservation from attending this event.

The engineering firm has entered into contracts to provide professional services to TDOT projects. Purchases for professional services are governed by Tenn. Code Ann. §§ 12-4-101, *et seq.* Tenn. Code Ann. § 12-4-109 governs contracts for personal services, professional services, and consultant services by state agencies and departments. That statute expressly exempts construction and engineering contracts entered into by TDOT under Tenn. Code Ann. §§ 54-5-101, *et seq.* Tenn. Code Ann. § 12-4-109(b). Further, Tenn. Code Ann. §§ 12-4-101, *et seq.*, do not contain a provision like § 12-3-106 that prohibits employees from accepting a gift from a person, firm, or corporation to whom a contract for the purchase of professional services may be awarded. Tenn. Code Ann. § 12-4-101 would prohibit a state official who supervises or awards a contract from being directly interested in such contract. Under this statute, “directly interested” means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. Tenn. Code Ann. § 12-4-101(a)(1). Attending an event sponsored by a firm that has entered into a contract with a state agency would not violate this provision.

We have reviewed statutes governing contracts for the construction, repair or maintenance of state highways at Tenn. Code Ann. §§ 54-5-101, *et seq.*, as well as regulations promulgated by the Department of Finance and Administration generally governing contracts for professional services. Nothing in these provisions appears to prohibit employees of TDOT or the Department of Environment and Conservation from attending this function. In addition, the request contains a quotation from a “guidance document provided to state employees” that generally prohibits state employees from accepting gifts from companies or individuals with whom they have had official business. The material furnished to the Office does not include the “guidance document” from which the statement is taken, and we have been unable to find such a blanket prohibition in any statute or regulation.

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