



August 5, 2008

ADVISORY OPINION 08-04, PART II

Interpretation Tenn. Code Ann. §§ 3-6-305(b) with regard to whether any of the exceptions to the gift ban contained therein allow state officials who are members of a non-profit organization to solicit contributions from employers of lobbyists for the purpose of supporting a conference of state government officials.

INTRODUCTION

Gerry Boaz, a technical review officer for the Tennessee Comptroller of the Treasury, asks the following question in his role as the Immediate Past President and Chapter Executive Committee member of the Nashville Chapter of the Association of Government Accountants.¹ Mr. Boaz initially asked several related questions, which contained numerous subparts. All but two of those questions and their subparts are addressed in Advisory Opinion 08-04, Part I. This Advisory Opinion answers the remaining two subparts of Mr. Boaz's questions, which were Questions 6(a) and 9(b) in Advisory Opinion 08-04, Part I. This opinion answers only those questions without addressing the question of whether the solicitation is, or is not prohibited by Tenn. Code Ann. § 3-6-305(a).

QUESTION

Do any of the statutory exceptions² to the general gift ban³ allow officials in the executive branch or officials in the legislative branch ("State Officials") to solicit employers of lobbyists ("Employers") for contributions to the Association of Government Accountants ("AGA")?

ANSWER

Yes. Regardless of whether the solicitation in question is prohibited by the Comprehensive Governmental Ethics Reform Act of 2006 ("Act") general gift ban,⁴ Tenn. Code Ann. § 3-6-305(b)(7)(B) provides an exception allowing State Officials to solicit Employers for contributions for the purpose of supporting AGA conferences.

¹ http://www.nashvilleaga.org/chapter_leadership.htm (last visited July 30, 2008).

² Tenn. Code Ann. § 3-6-305(b)

³ Tenn. Code Ann. § 3-6-305(a).

⁴ Tenn. Code Ann. § 3-6-305(a). The question whether the prohibition applies is being considered separately.

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FACTS

The AGA is a national professional organization which promotes government accountability, provides education, fosters professional development and providing certification. The AGA also supports standards and research to advance government accountability. The AGA's membership is comprised of government accountability professionals such as auditors, accountants, budget analysts, chief financial officers, information systems managers, finance directors, inspectors general, professors and students. Chapter Executive Committee members receive permission from their respective agencies to serve as in this role.

Most AGA chapters have fundraising activities. In 2006, AGA solicited funds from private businesses to sponsor the Southeastern Professional Development Conference, a regional event. The AGA held another conference in January 2008, and plans to hold conferences in 2009. The AGA intends to solicit funds for these conferences from businesses that have previously sold goods and services to the State of Tennessee. The AGA wants to start a Corporate Sponsorship Committee to solicit contributions from local businesses to benefit all members of the AGA.

ANALYSIS

The money and tangible items the AGA wishes to solicit from Employers are "gifts" as defined in the Act, Tenn. Code Ann. § 3-6-301(11).

Without deciding whether Tenn. Code Ann. § 3-6-305(a)(2) generally prohibits a State Official from soliciting gifts for the benefit of a non-profit organization, the Commission finds that at least one exception to the general gift ban would apply. Thus, even if the gift ban of Tenn. Code Ann. § 3-6-305(a)(2) prohibits State Officials (and candidates and immediate family members) from soliciting gifts for the benefit of third party entities, Tenn. Code Ann. § 3-6-305(b)(7)(B) provides at least one exception to the prohibition.⁵ Under Tenn. Code Ann. § 3-6-305(b)(7)(B), AGA members who are also State Officials are allowed to solicit gifts from Employers for the purpose of helping to sponsor the AGA's conferences in the form of financial contributions and tangible items for silent auctions and goodie bags.

Tenn. Code Ann. § 3-6-305(b)(7)(B) provides that the prohibition in subsection (a)(2) is not applicable if the State Officials are soliciting an Employer for gifts that are:

Entertainment, food, refreshments, meals, beverages, amenities, health screenings, lodging, or admission tickets that are provided in connection with, and are arranged or coordinated through the employees or designated agents of, a conference, if the conference is sponsored by an established and recognized organization of elected or appointed state government officials, staff of state government officials or both officials and staff, or any other established and

⁵ The Commission recognizes that other exceptions to the gift ban may also apply to provide an exception to the general prohibition.

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recognized organization that is an umbrella organization for such officials, staff, or both officials and staff.

A State Official may solicit an Employer under this particular exception as long as the State Official is soliciting for a conference sponsored by an established and recognized organization of “elected or appointed state government officials, staff of state government officials or both officials and staff, or any other established and recognized organization that is an umbrella organization for such officials, staff, or both officials and staff.”⁶

The Commission finds that the AGA is “an established and recognized organization of elected or appointed state government officials, staff of state government officials or both officials and staff, or any other established and recognized organization that is an umbrella organization for such officials, staff, or both officials and staff.”

Tenn. Code Ann. § 3-6-102 states the Act’s purpose as follows:

It is the intent of the general assembly that the integrity of the processes of government be secured and protected from abuse. The general assembly recognizes that a public office is a public trust and that the citizens of Tennessee are entitled to a responsive, accountable, and incorruptible government. The Tennessee Ethics Commission is established to sustain the public's confidence in government by increasing the integrity and transparency of state and local government through regulation of lobbying activities, financial disclosure requirements, and ethical conduct.

Allowing a narrow, specific exception for State Officials to solicit Employers for contributions to support a conference of an established and recognized organization of State Officials or an umbrella organization for State Officials is in line with the Act’s purpose. Tenn. Code Ann. § 3-6-305(b)(7)(B) provides a regulated and transparent purpose for which State Officials may solicit Employers.⁷

Donald J. Hall, Chair
R. Larry Brown
Thomas J. Garland
Linda Whitlow Knight, Esq.
Dianne Ferrell Neal
Benjamin S. Purser, Jr.,
Commissioners

⁶ *Id.*

⁷ Allowing State Officials to solicit employers for a conference of an established and recognized organization of State Officials, or an umbrella organization for such State Officials would also be in line with Tenn. Code Ann. § 3-6-301(11). In Tenn. Code Ann. § 3-6-301(11) the Act excepts from the definition of “gift” “the waiver of a registration fee for a conference or educational seminar.” While an Employer waiving a State Official’s registration fee is factually distinct from a State Official soliciting an Employer to fund a conference of an established and recognized organization of State Employees, considering the two sections in para materia, it does seem the Act wishes to encourage State Officials to attend educational conferences and seminars.

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Adopted: June 24, 2008

Issued: August 5, 2008