

Christmas Gifts May Prove Costly

The State Ethics Commission has ruled that the acceptance of monetary gifts by a number of Decatur high school coaches violated the Alabama Ethics law. Twenty one coaches received bonuses of from \$50 to \$1,125 as Christmas gifts from school booster clubs. An internal audit uncovered the gifts by the booster clubs, and the matter was referred to the Ethics Commission for review. This was apparently a long-standing practice, and school officials did not believe there was any intent to violate the law by any party. The gifts were returned by all the coaches.

The Ethics law prohibits any public official or employee from using his/her position to obtain personal gain. § 36-25-5(a), *Alabama Code*. Prior to 2011, the Ethics Act stated that a seasonal gift with a value of less than \$100 was not considered a “thing of value” that would qualify as personal gain. However, this provision was subsequently repealed by the legislature as part of an attempt to redefine what was an acceptable benefit under the statute. A new subsection was added, stating that greeting cards; plaques, certificates, and trophies of little value; promotional items; and items of *de minimus* value would not be considered a thing of value. In 2012, a definition of “*de minimus*” was added, indicating that the term referred to a value of \$25 or less per occasion or \$50 or less in a calendar year, apparently when more than a single item was given by a particular “provider.”

The belief on the part of the Decatur school employees that this practice was permissible possibly reflected several assumptions regarding the law that are incorrect. In an opinion issued a year ago (Advisory Opinion No. 2011-12, Dec. 7, 2011), the Ethics Commission addressed a number of questions relating to the application of the Ethics law, including what may and may not be done regarding the acceptance of Christmas gifts by teachers and school personnel. The Commission set out certain clear rules in this opinion. First, *no* gift may be given or accepted if the purpose is to improperly influence official action (*e.g.*, the assignment of a grade to a student). Secondly, the statute does not, as to this issue, treat government officials, school personnel, and other public officials and employees differently. The law does not allow the giving of an item to a teacher while prohibiting that same gift to a government official, or vice versa. The same rules apply to all public officials and employees. Thirdly, the Commission distinguished between a gift of consumable items (such as food) to an office to be enjoyed by anyone, staff and visitors alike, from a gift intended to be enjoyed by a public employee personally. The former is within the law, whereas the latter might not be.

The Advisory Opinion listed a number of items that it viewed as examples of acceptable seasonable gifts to teachers: fruit baskets; Christmas ornaments of little value; coffee mugs filled with candy; CDs, books, scarves, etc.; and items that may be used in performing teaching duties. Interestingly, this opinion was issued prior to the most recent amendment to this section of the Ethics law that, as mentioned above, added a definition of “*de minimus* value.” The Commission stated in this opinion that it could not “put a dollar value on what is *de minimus* without being arbitrary.” The legislature, however, has now provided such a “dollar value,” making it clear that gifts valued at less than \$25 will not be regarded as unlawful.

The Ethics Commission has indicated that it will handle the coaches’ cases administratively (rather than resort to criminal proceedings). Fines (up to \$1,000) could,

however, still be assessed against each coach. This case is a reminder that University employees and officials should be careful not to transgress state ethics limitations by accepting from members of the public for personal use even well-intentioned gifts that fall outside the narrow bounds allowed by the law.