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Honorable Jim Folsom, Jr.
Lieutenant Governor
11 South Union Street, Suite 725
Montgomery, Alabama 36130-6050

Prepaid College Tuition Trust Fund
– Privacy – State Treasurer

The State Treasurer may provide contact information for Save Alabama PACT in a regularly scheduled mailing to purchasers of prepaid tuition contracts if the Board of Directors of the Wallace-Folsom College Savings Investment Plan determines, in accordance with the criteria set forth herein, that a public purpose is served.

Dear Governor Folsom:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Would state law or the privacy provisions within the PACT agreement preclude the State Treasurer from mentioning the existence of savealabamapact.com and listing the group's website address in any regularly scheduled mailing to PACT participants?

FACTS AND ANALYSIS

Your request states as follows:

Concerning the current situation with the Alabama Prepaid Affordable College Tuition Program, or PACT Program, an advocacy group consisting of some PACT participants – savealabamapact.com – was formed. The group sought to inform PACT participants of the group's existence and to share information by requesting a mailing list of participants from the State Treasurer's Office. They were informed by the State Treasurer's Office that providing the list would violate the PACT's privacy provisions. Savealabamapact.com then sought to have material and contact information included in a mailing from the State Treasurer's Office to PACT participants. Again, they were informed that this would violate privacy provisions.

Savealabamapact.com now seeks to simply have their name and contact information mentioned in a letter from the State Treasurer to PACT participants. They are not asking for an endorsement or any qualifying statements regarding their group. According to the organizers of savealabamapact.com, they simply want other PACT participants to be made aware of their existence and their website address.

The home page of the Save Alabama PACT website states that the organization "serves as an open facilitator of information, ideas, discussions, and network of all participants, supporters, and legislators working towards a resolution to the current issues facing" the PACT Program. <http://www.savealabamapact.com>. (A review of the website reflects that Save Alabama PACT advocates for a solution to the current funding crisis facing the PACT Program.

The Wallace-Folsom College Savings Investment Plan ("Plan") is provided for in section 16-33C-1, *et seq.*, of the Code of Alabama. ALA. CODE § 16-33C-1 to § 16-33C-13 (2001 & Supp. 2009). The Plan consists of two programs, the PACT and ACES Programs. ALA. CODE § 16-33C-2.1 (2001). The programs are college savings alternatives in which payments are made to respective trust funds. ALA. CODE §§ 16-33C-6 (2001), 16-33C-10 (2001 & Supp. 2009). Under the PACT Program, "purchasers enter into PACT contracts for the future payment of tuition and mandatory

fees at eligible educational institutions.” ALA. CODE § 16-33C-6 (2001). The programs are administered by the State Treasurer pursuant to regulations established by the Board of Directors of the Plan (“Board”). ALA. CODE §§ 16-33C-2.1, 16-33C-3(6) (2001). The State Treasurer also chairs the Board. ALA. CODE § 16-33C-4(e) (Supp. 2009).

Section 93 of article IV of the Recompiled Constitution of Alabama prohibits the state from lending money or credit in aid of a private person, association, or corporation. ALA. CONST. art. IV, § 93 (amends. 1, 12, 58). Section 94 of article IV of the Recompiled Constitution of Alabama likewise prohibits a municipality or county from granting money or other thing of value in aid of a private individual, corporation, or association. ALA. CONST. art. IV, § 94 (amends. 112, 558). These sections prohibit “spending public funds for private purposes.” Opinion to Honorable Robert L. Balch, Superintendent, Morgan County Schools, dated July 28, 2009, A.G. No. 2009-095, at 2, *quoting* opinion to Honorable Tony Petelos, Commissioner, Department of Human Resources, dated February 17, 1999, A.G. No. 99-00112, at 3.

Sections 93 and 94 are not violated when the funds of a governmental entity are appropriated for a public purpose. *Slawson v. Ala. Forestry Comm’n*, 631 So. 2d 953, 956 (1994). The determination of whether a public purpose will be served by an expenditure of public funds is a factual one that can only be made by the governing body of the entity making the expenditure. Opinions to Honorable W. Phil Eldridge, Attorney, Geneva County Commission, dated May 7, 2007, A.G. No. 2007-093; and to Honorable Lee H. Warner, Executive Director, Alabama Historical Commission, dated March 28, 2003, A.G. No. 2003-114. “[T]he action taken must be consistent with the authority granted to the entity.” *Warner*, at 5. The public purpose analysis that the entity is required to engage in has been explained as follows:

To determine whether such a purpose is public, the [governing body] must look to the statutes setting forth the powers of [the entity]. If, within such powers, there exists the authority to promote [the action at issue], then the [body] need only decide whether transfer of the real property to this Board will help to accomplish that purpose.

Eldridge, at 2.

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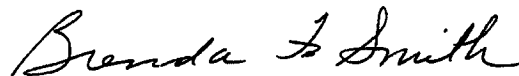
CONCLUSION

The State Treasurer may provide contact information for Save Alabama PACT in a regularly scheduled mailing to purchasers of prepaid tuition contracts if the Board of Directors of the Wallace-Folsom College Savings Investment Plan determines, in accordance with the criteria set forth above, that a public purpose is served.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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