

OFFICE OF THE ATTORNEY GENERAL

98-00211



BILL PRYOR
ATTORNEY GENERAL
STATE OF ALABAMA

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (334) 242-7300

September 8, 1998

Honorable Gregory D. Wren
State Representative
House of Representatives
4211 Carmichael Road
Montgomery, AL 36106

**Elections – Candidates – State Prop-
erty**

Any common or public areas of public buildings and grounds can be used for holding press conferences or videotaping political advertisements provided that access to those areas is available to all candidates on an equal basis and subject to reasonable scheduling restrictions to ensure that such activities do not interfere with the conduct of public business. Any areas in public buildings that are not open for equal access to all candidates, such as individual offices, should not be used by any candidate, including public officials and employees.

Dear Representative Wren:

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

QUESTION

Do sections 17-1-7(c), 36-12-61, and 36-25-5 of the Code of Alabama or any other provisions of the Code of Alabama prohibit candidates for public office, whether incumbents or otherwise, from using public buildings as a location for holding press conferences to announce their candidacy or state their positions on issues or as a location for videotaping their television advertisements? If Alabama law prohibits the use of certain parts of public buildings and their grounds for news conferences and videotaping political advertisements, but allows the use of other parts of those buildings and grounds for such purposes, please identify the areas that can and cannot be used.

FACTS AND ANALYSIS

Section 17-1-7 of the Code of Alabama authorizes city, county, and state employees to participate in political activities to the same extent as any other citizen and provides:

(c) No person in the employment of the State of Alabama, a county, or a city whether classified or unclassified, shall use any state, county, or city funds, property or time, for any political activities. Any person who is in the employment of the State of Alabama, a county, or a city shall be on approved leave to engage in political action or the person shall be on personal time before or after work and on holidays. . . . Any person who violates this section shall be guilty of the crime of trading in public office and upon conviction thereof, shall be fined or sentenced, or both, as provided by Section 13A-10-63.

ALA. CODE § 17-1-7(c) (1995).

Section 36-12-61 of the Code of Alabama makes it unlawful for any officer or employee of the State of Alabama to use state-owned property to promote a candidate. This section states:

It shall be unlawful for any officer or employee of the state of Alabama to use or permit to be used any state-owned property of any character or description, including stationery, stamps, office equipment, office supplies, automobiles or any other property used by him, in his custody or under his control for the promotion or advancement of the interest of any candidate for the nomination or election to any public office of the state of Alabama.

ALA. CODE § 36-12-61 (1991).

The purpose of article 4 of title 36 of the Code of Alabama that includes section 36-12-61 is expressed in section 36-12-60 as follows:

The object and purpose of this article is to place all candidates for any state office upon an equality by the prevention of the use of any state-owned property in the promotion or advancement of the candidacy of any individual to the nomination or election to any public office of the state of Alabama.

ALA. CODE § 36-12-60 (1991).

Clearly, these statutes are intended to prohibit a public official or employee from using public funds, public property, and public time for political activities. These statutes prevent a public official or employee from using public resources for a private benefit and ensure that they do not gain an unfair campaign advantage over candidates who are private citizens. There is no case law interpreting these provisions. As evidenced by the language in the statutes, public officials and employees who are candidates are to be placed on an equal footing with all other candidates. These statutes, however, do not preclude the use of public buildings and grounds as the location for press conferences and videotaping for political purposes provided all candidates have equal access to the buildings and the grounds.

It is the opinion of this Office that any common areas or public areas of public buildings and grounds, such as lawns, steps, porches, lobbies, hallways, and other like areas can be used for holding press conferences or videotaping political advertisements provided that access to those areas is available to all candidates on an equal basis. The use is

Honorable Gregory D. Wren
Page 4

also subject to reasonable scheduling restrictions to ensure that such activities do not interfere with the conduct of public business. Any areas in public buildings that are not open for equal access to all candidates should not be used by any candidate, including public officials and employees. Individual offices, while used for the purpose of conducting public business, are assigned to individual public officials and employees for their use and are under their individual custody and control. These individual offices are not open to the public and, therefore, should not be used for political press conferences and videotaping by any candidate.

Section 36-25-5 of the Code of Alabama is a provision of the Ethics Law. Any questions concerning the Ethics Law should be addressed to the Alabama Ethics Commission.


CONCLUSION

Any common or public areas of public buildings and grounds, such as lawns, steps, porches, lobbies, hallways, and other like areas can be used for holding press conferences or videotaping political advertisements provided that access to those areas is available to all candidates on an equal basis and subject to reasonable scheduling restrictions to ensure that such activities do not interfere with the conduct of public business. Any areas in public buildings that are not open for equal access to all candidates, such as individual offices, should not be used by any candidate, including public officials and employees.

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

Sincerely,

BILL PRYOR
Attorney General
By:


CAROL JEAN SMITH
Chief, Opinions Division

BP/CJS/BFS
W/9.98/f