Public Choice 73: 135-145, 1992.
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Ethics laws and the outside earnings of politicians: The case of Alabama's "legislator-educators"*

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Received July 1990; accepted September 1990

1. Introduction

This paper is about the price of pork. In particular, we examine the distributional impact of a provision of Alabama's Code of Ethics which allows sitting state legislators to be on the payroll of public institutions of higher education. One in five Alabama legislators was so employed in 1987–88. We find that public funding per student for the junior and senior colleges in the state which employ legislators as educators is significantly higher than that received by comparable institutions. In fact, as a group, the 15 junior and senior colleges in Alabama that pay educational salaries to legislators receive nearly $19 in extra public funding annually for every $1 paid to a state senator or representative.

While certainly not surprising, this result has at least two important implications. First, it emphasizes that the returns from legislating are appropriable (McCormick and Tollison, 1981: 82). These returns consist of the legislative salary paid by the taxpayers (which includes the perquisites of office) plus the outside earnings of politicians, both legal and illegal, received from interest groups seeking legislative favors. The two sources of compensation tend to be inversely related: Where legislative salaries are low, more of the returns to legislating are derived from outside earnings. Legislators will rationally be more responsive to pressure-group demands in such circumstances, paying less attention to taxpayer interests than they would otherwise. The ability of Alabama's legislators to appropriate the returns to legislating public education budgets legally – and in the form of cash – helps shed some light on this trade-off. Specifically, the salary figures at our disposal show that the outside earnings received by Alabama's state senators and representatives from a single

* We benefitted from comments by Robert McCormick. Any remaining errors are our own.

pressure group (the education lobby) in most cases exceed their legislative wage.

Second, our empirical results provide a point estimate of the magnitude of the brokerage fee assessed by legislators for redistributing wealth. The data suggest that this fee amounts to about 5% of the value of the wealth being transferred. If our case study is at all representative of wealth redistribution activity generally, then we have evidence that legislating generates rates of return that are comparable to those available on other investment opportunities in the economy.

The paper is organized as follows. Section 2 discusses the relationship between legislative pay and the outside earnings of politicians. The data and empirical results are presented in Section 3. Section 4 contains some concluding remarks.

2. Appropriating the returns to legislating

Pork barrel is a commonplace feature of geographically based representative democracy. Because elected representatives receive a higher political payoff from promoting the local interests of their constituents than they do from taking vague positions in support of the so-called public interest, legislators have a strong incentive to search for public policies and programs that confer direct benefits on their home districts while imposing costs on taxpayers in general, most of whom reside – and vote – in other jurisdictions. For example, individual legislators at the national level work hard to attract military bases and public works projects to their states and districts (and strongly oppose measures that would cut such budget items) not because these expenditures promote the common good, but rather because they create wealth for their constituents who themselves bear only a small share of the total tax burden required to finance these programs.

Pork barrel politics has been shown to play an important role in a wide variety of public policies ranging from public utility pricing (Peltzman, 1971; Maloney, McCormick, and Tollison, 1984) to enforcement of the antitrust laws (Faith, Leavens, and Tollison, 1982). In a geographic system of representation, politicians, as brokers of wealth transfers (McCormick and Tollison, 1981), rationally favor legislative measures whose benefits are sharply focused at home but whose costs are spread more diffusely over the polity as a whole. None of this is novel, to paraphrase John Kenneth Galbraith (1958: 155–156): All would be regarded as elementary by the most retarded student in the nation's most primitive department of political science.

In the interest-group theory of government (Stigler, 1971; Peltzman, 1976), elected representatives sell special-interest legislation in return for political support. Pressure groups within the polity purchase wealth transfers by supplying votes, campaign contributions, and other media of political exchange which enhance the reelection prospects of the sitting legislators who rally most effectively to their cause. Because outright bribery of politicians is illegal and ethics laws typically limit the most obvious sources of conflict between legislators' fiduciary responsibilities to the electorate and their own self-interests, pressure groups that have a comparative advantage in mobilizing in-kind political support will normally be able to outbid rival interests in the higgling and bargaining process that leads to equilibrium in the market for legislative wealth transfers.

These in-kind political payments comprise one margin on which legislators appropriate the returns to legislating. Outside earnings of this sort, which are received from pressure groups seeking legislative favors, take a variety of forms. In addition to those mentioned above, they include speaking fees, book contracts, business for a legislator's law firm,[1] business for firms in which the legislator has a financial interest, post-legislative employment by special interests,[2] and so on. Legislative salaries, which come directly at the taxpayer's expense, represent a second way in which legislators appropriate the returns to legislating (McCormick and Tollison, 1981: 82).

Given that a legislative wealth transfer is valuable to the benefiting interest group, it follows that these two methods of appropriation will be inversely related: The lower are legislative salaries, the bigger the gap will be between the total returns from legislating and the amount received from the general taxpayer. More of the fee for legislative services rendered will accordingly be paid by the pressure group that has a financial stake in the piece of legislation at issue. Legislators will rationally be more attentive to special interests as opposed to taxpayer interests in such circumstances.

This observation provides an insight into the role played by ethics laws in the interest-group theory of government. Such laws are designed to limit conflicts of interest between legislators' fiduciary duties to the electorate and their own personal gains from office.[3] Ethics laws typically place restrictions on the amount and types of income politicians may earn over and above their publicly paid salaries, normally require periodic disclosure of such earnings, and often establish a commission or other regulatory body to supervise compliance with the prescribed code of behavior.

Low legislative salaries would seem to call for placing more stringent ethical standards on politicians. When more of the returns to legislating are derived from outside earnings received from pressure groups seeking legislative wealth transfers, legislators will have a stronger incentive to resolve the question of whose interests to represent (Ireland, 1972) in favor of the special interests. Moreover, low legislative salaries mean that legislators have less to lose from violating the public trust. More malfeasance can be expected to occur where its cost is reduced (Becker and Stigler, 1974).[4]

Voter-taxpayers will not be ignorant of the tradeoff between the level of legislator pay and the scope of rent-seeking activity taking place through legislative processes. Where legislator salaries are low, stricter ethical laws that impose sharper limits on the outside earnings of politicians will help reduce the extent to which the returns to legislating are derived from the rent-seeking expenditures of special-interest groups. Voter-taxpayers will accordingly favor an inverse relationship between legislator salaries and the stringency of the standards of ethical behavior required of their elected representatives.

The private interests of legislators themselves work in exactly the opposite direction. Because low wage pay lowers the returns to legislating on one margin, legislators will favor weaker ethical codes that allows them to legitimately appropriate more of the value of legislation in the form of outside earnings. Pressure groups will also benefit from a combination of low legislator pay and loose ethical standards for politicians. When legislators collect a larger share of the returns to legislating from outside sources, they rationally devote more attention to special interests at the expense of taxpayer interests.

Of course, codes of ethics and legislator salaries are jointly determined within the same political process that generates all other types of legislation. The particular relation between the two observed in any given case will therefore depend on the nature of the benefit-cost calculus confronting each of the various groups – voter-taxpayers, legislators, and special interests – having a stake in the rent-seeking consequences of the mix of sources from which the returns to legislating are derived. It would be an interesting empirical exercise to extend existing studies of the determinants of legislator salaries across states (e.g., McCormick and Tollison, 1978) by incorporating some measure of the variation in the stringency of codes of ethics as an explanatory variable.

Our purpose in this paper is much more modest, however. As George Stigler (1978: 17) has remarked, "the central task of representation is to give efficient representation to the collection of group interests that express the desires of citizens who compose the state." The question we ask is, How does the legal payoff to the representative for performing these tasks impact on the distribution of public funds? More specifically, in the following section we examine the relation between the outside earnings Alabama's legislators derive from employment by public institutions of higher education in the state and the allocation of the public education budget across colleges and universities.

3. Empirical model and results

Alabama's ethics law expressly excludes "those persons who are primarily engaged in teaching duties in all schools, colleges, and universities in the state" from the definition of the public employees who are covered by the statute

(Code of Ethics §36–25–1). Among other things, this provision has been interpreted to permit an individual who is employed as a public school teacher or principal to simultaneously serve as a member of the state board of education,[5] and to allow a sitting legislator to also be employed as an educator and to vote on matters affecting public education, including teacher pay raises.[6]

During 1987–88, four state senators and 28 members of the Alabama House of Representatives were simultaneously employed by state junior and senior colleges and by various local boards of education.[7] Their legislative salaries ranged from $23,810 to $31,610, while their education salaries ranged from $12,226 to over $67,000. The highest paid educator-legislators were Reps. Yvonne Kennedy and Charles Britnell, who served as the presidents of Bishop State Junior College and Northwest Alabama Junior College, respectively. Only two of the legislators who disclosed employment as educators for the period running from 1 July 1987 through 30 June 1988 received no salary from that source. (The affiliations and salaries of the 32 Alabama legislators employed as educators are listed in the Appendix.)[8]

Allowing legislators to be employed directly by a pressure group, especially one like the public education lobby which seeks favors for an industry that is highly regulated and subsidized at the state level, has predictable consequences for public education funding. First, assuming that education bureaucrats have a budget-maximization objective (Niskanen, 1971), funding for public education ought to be higher in Alabama than in other states that prohibit cash payments for legislative services rendered to special interests.[9] While we have not attempted a systematic test of this prediction, it is worth noting that in comparably poor Mississippi, where legislators may not be employed by other government agencies, 40.6% of the state budget was allocated to education in 1984; education received nearly 45% of Alabama's total general expenditures in the same year (Council of State Goverments 1986: 272).[10]

Secondly, the Alabama colleges and universities that employ legislators as educators ought to benefit selectively at the expense of other educational institutions in the state that have not chosen this strategy for obtaining influence in the political process. In order to test this prediction, we specified the following simple regression model to explain variations in funding per student across Alabama's 15 senior and 20 community colleges:

FPS = f(TGP, EDSAL, DCS, u),

where

FPS = funding per student, computed as the ratio of the total funding appropriatred for the school by the Alabama legislature in 1988 (FUND) to the total number of students enrolled during the fall of 1988 (ENROLL);

TGP = total enrollment of graduate and professional students, fall 1988;

EDSAL = total salaries paid by the school to Alabama's legislators during 1987–88;

DCS = 1 if the school is a community college, and 0 for four-year senior colleges; and

u = regression error term.

TGP controls for differences across schools in the number of students enrolled in graduate and professional (medical, dental, optometry, and veterinary) degree programs. The resources employed by colleges and universities beyond the baccalaureate level are generally more costly than those used in the education of undergraduates. State funding formulas typically recognize this fact by providing proportionately higher reimbursement rates per full-time equivalent graduate student. We therefore expect the estimated coefficient on TGP to be positive in sign.

DCS holds constant other factors (apart from differences associated with graduate and professional education) that influence funding levels for junior versus senior colleges.[11] Do Alabama's community colleges receive fewer dollars per student than four-year institutions? The data will answer this question.

The principal variable of interest, EDSAL, measures the total 1987–88 educational salary paid by each of Alabama's junior and senior colleges to various state senators and representatives. Not all institutions of higher education in the state employed legislators as educators (the University of Alabama and Auburn University are the notable exceptions); some colleges (e.g., Troy State University and the University of Alabama at Birmingham) retained the services of more than one legislator. (In the cases in which more than one legislator was employed by an institution, the education salaries were summed.) Overall, the education salaries paid by Alabama's junior and senior colleges to the 32 senators and representatives so employed amounted to just over $1 million in 1987–88. The average educational salary was $21,124; the figures ranged from zero to $105,813 – the amount paid by UAB to one senator and two representatives (see Table 1). Higher educational salaries will translate into more funding per student if the interest-group theory holds.[12]

Ordinary least squares regression results are presented in Table 2. The estimates suggest that each graduate or professional student enrolled by an Alabama college or university generates additional state funding ranging between $0.87 and $1 per student. (This figure translates into between $4,000 and $4,500 annually at the mean enrollment of the schools in our sample.) Alabama's junior colleges appear to receive on the order of $434 per student more from state sources than their four-year college counterparts, but this difference is not statistically significant at standard confidence levels.

Table 1. Summary statistics

Variable	Mean	Standard deviation	Minimum	Maximum
ENROLL	4,586.06	5,362.87	743.00	26,133.00
FUND	$18,409,687.00	$30,807,122.00	$1,798,249.00	$135,480,300.00
FPS	$3,115.13	$1,297.55	$931.41	$7,534.60
TGP	513.74	953.01	0.00	3,829.00
EDSAL	$21,123.71	$31,534.53	0.00	$105,813.00
DCS	0.57	0.50	0.00	1.00

Table 2. Regression results

	Dependent variable: Funding per student	
CONSTANT	2427.940	2107.307
TGP	0.872 (5.58)*	1.017 (5.10)*
EDSAL	0.013 (2.80)*	0.013 (2.79)*
DCS		434.554 (1.16)
R^2	0.594	0.611
F	23.436	16.249
N	35	35

Note. t-statistics in parentheses; asterisks denote significance at the 1% level.

Most importantly, the regression results show that for every dollar a school pays a legislator in the form of salary, state education funding levels are higher by about 1.3 cents per student, ceteris paribus. This payoff amounts to nearly $60 in additional funding annually per dollar of educational salary when evaluated at the mean enrollment figure of 4,586. Put another way, a school that paid the average educational salary of $21,124 to a legislator could expect to receive an extra $1.26 million from state sources in 1988, a premium of roughly 6.7% over and above the average funding level for the 35 junior and senior colleges in our sample. All told, the 15 colleges and universities in Alabama that paid educational salaries to legislators during 1987–88 received a wealth transfer in additional state funding amounting to $18.9 million.

The regression equation explains on the order of 60% of the variation in state funding per student across Alabama's 35 junior and senior colleges (20% of the variation in the dependent variable is explained by EDSAL alone). Private interests are evidently at work in legislative funding decisions for higher education in Alabama.

4. Concluding remarks

This paper has reported evidence on the returns to legislating. In particular, we examined the distributional impact of a provision of Alabama's Code of Ethics which allows sitting state legislators to be on the payroll of public institutions of higher education. Using salary and educational budget data for 1987–88, we found that public funding per student for the junior and senior colleges in the state which employ legislators as educators is significantly higher than that received by comparable institutions.

Our empirical results suggest that Alabama's legislators selectively redistributed nearly $19 in available public education funds for every $1 received in outside earnings permitted by the state's code of ethics. The data thus imply that the brokerage fee assessed by legislators for redistributing wealth is on the order of 5% of the value of the transfer.

More importantly, our paper speaks to the importance of the relationship between legislative salaries, ethics laws, and the outside earnings of politicians. Because low wage pay for legislators lowers the returns to legislating on one margin, legislators will favor less stringent standards of ethical behavior that allow them to legitimately appropriate more of the value of legislation from outside sources. Pressure groups also benefit from a combination of low legislator salaries and loose ethical codes for politicians. When legislators collect a larger share of the returns to legislating in the form of outside earnings, they rationally devote more attention to special interests as opposed to taxpayer interests. They certainly appear to do so in the case of funding for higher education in Alabama.

Notes

1. Lawyers are disproportionately represented in legislatures because their occupation affords a unique opportunity for internalizing the returns to legislating. See McCormick and Tollison (1981: 79–100) for a discussion of this point.
2. Spiller (1990) offers some theory and evidence suggesting that almost half of the members of important federal regulatory commissions went to work for regulated industry following their tenure as public servants.
3. The Mississippi Ethics in Government statute, for example, declares its purpose to be that
   it is essential to the proper operation of democratic government that public officials and

employees be independent and impartial; that governmental decisions and policy be made in the proper channels of the governmental structure; that public office not be used for private gain other than the remuneration provided by law; that there be public confidence in the integrity of government; and that public officials be assisted in determinations of conflicts of interest (7 Miss Supp 63).

4. Also see Barro (1973) and Stigler (1976).
5. In *Alabama State Ethics Comm., ex rel Charles Graddick* v. *Dr. Evelyn Pratt, etc.*, Civil Action No. CV-83-175-G (Circuit Court, Alabama Fifteenth Judicial Circuit, 1983) the court held that the state Ethics Commission could not enforce an advisory opinion finding that Dr. Pratt's employment as an elementary school principal prevented her from serving on the state board of education.
6. "It is constitutional for an educator/legislator to vote on a pay raise for teachers, at least so long as the bill does not affect the legislator in a way different from the way it affects the other members of the class to which he belongs." See *Opinion of Justices*, 474 So. 2d 700 (Ala. 1985). This opinion has been cited favorably in a number of cases, the most recent being *Britain v. State*, 518 So. 2d 198 (Ala. Crim. App. 1987).
7. The term educator is defined loosely. According to Taylor (1989), most of the Alabama legislators were employed as administrators with "special" assignments: "'Director of Special Projects' and 'Assistant to the President for Industrial Development' are some of the job titles."
8. The salary figures are taken from Taylor (1989). Those legislators employed by local boards of education were excluded from the analysis.
9. As mentioned earlier, there are a variety of means by which legislators may appropriate the returns to legislating. In fact, Taylor (1989) reports that 26 of the 32 Alabama legislators employed as educators were also endorsed by or received campaign contributions from the Alabama Education Association PAC. (The contributions totalled $59,642 in 1986.) However, to the extent that the education salaries paid to legislators represent something like an unrestricted cash grant for services rendered, they should be more effective in buying favorable votes on matters affecting public education than alternative forms of political support.
10. The average budget share for education across the 50 states was 37.5% in 1984 (Council of State Governments, 1986: 242).
11. Junior colleges obviously do not teach graduate and professional students; neither do all four-year colleges. The simple correlation coefficient between TGP and DCS in our data set is −0.63. Multicollinearity is not evident, however: While TGP is significant in the presence of DCS, DCS is not significant (at the five percent level) even when TGP is excluded from the right-hand side.
12. The enrollment data, including the separate figures for graduate and professional students, were obtained from Alabama Commission on Higher Education (1989). Appropriations for senior colleges were taken from Alabama Commission on Higher Education (1988); the budget data for two-year institutions were supplied to the authors in a private communication from the Alabama Department of Postsecondary Education. We would be happy to provide copies of our data set upon request.

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Appendix

Alabama legislators employed by public institutions of higher education and local school boards, 1987–88

Educator-legislators (Party-Dist.)	Employer	Education salary ($)	Legislative salary ($)
Senate			
Ray Campbell (D-3)	Calhoun St. Community College	44,571	25,950
Bobby Denton (D-1)	Northwest Alabama Jr. College	40,457	29,090
Donald Holmon (D-12)	Jacksonville State University	12,226	29,650
Fred Horn (D-10)	Univ. of Alabama at Birmingham	27,216	31,610
House			
Bill Bowling (D-12)	Wallace St. Community College	52,632	24,050
Charles Britnell (D-18)	Northwest Alabama Jr. College	63,581	23,890

Educator-legislators (Party-Dist.)	Employer	Education salary ($)	Legislative salary ($)
Jenkins Bryant, Jr. (D-68)	Hale County Bd. of Education	35,232	24,320
Ralph Burke (D-24)	DeKalb County Bd. of Education	16,777	20,155
James Buskey (D-99)	Mobile County School Board	30,340	23,810
John Buskey (D-77)	Alabama State University	40,670	25,530
Joe Carothers (D-86)	Houston Co. Bd. of Education	22,006	26,255
Bill Clark (D-98)	Mobile County Bd. of Education	32,400	23,010
Tom Coburn (D-2)	Muscle Shoals Tech. School	42,505	27,370
Pat Davis (D-58)	Lawson State Comm. College	28,884	24,380
Joe Ford (D-28)	Gadsden St. Community College	52,632	28,963
DeWayne Freeman (D-21)	University of Ala. at Huntsville	20,576	20,860
Victor Gaston (R-100)	Mobile County School Board	30,518	23,810
George Grayson (D-19)	Alabama A&M University	40,140	23,810
Dutch Higginbotham (D-80)	Troy State University	0	24,340
Jimmy Holley (D-91)	Troy State University	41,667	23,810
Alvin Holmes (D-78)	Alabama State University	31,345	24,320
Roy Johnson (D-63)	Tuscaloosa Bd. of Education	43,016	24,510
Yvonne Kennedy (D-103)	Bishop State Jr. College	67,661	27,695
Allen Layson (D-15)	Livingston University	25,877	28,050
Paul Parker (D-9)	Hartselle Bd. of Education	34,682	24,320
George Perdue (D-54)	University of Alabama at Birmingham	44,990	23,850
John Rogers (D-52)	University of Alabama at Birmingham	33,607	25,115
Nelson Starkey (D-1)	University of North Alabama	23,214	27,845
James Thomas (D-69)	Wilcox Co. Board of Education	32,088	28,935
J.E. Turner (D-102)	University of South Alabama	0	24,600
Skippy White (D-93)	Jeff Davis Jr. College	13,500	26,370
Nolan Williams (D-80)	Troy State University	33,892	29,110
	Totals:	$1,058,902	$836,185

Source: Taylor (1989).