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August 1, 2018

ADVISORY OPINION NO. 2018-10

The Honorable Mark M. Tuggle
State Representative, District No. 81
110 Calhoun Street, Suite 108
Alexander City, AL 35010

Revolving Door/ A retiring member of the Alabama House of Representatives may accept a position as the Chief of Staff of the Office of the Speaker of the House of Representatives (the Speaker's Office) without violating the "Revolving Door" provisions of Alabama's Ethics Law, provided that he not engage in lobbying in contravention of the Act or violate the prohibition on the extension of floor privileges for lobbying which Ala. Code § 36-25-23(b) prohibits.

Dear Representative Tuggle:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion of this Commission, and this opinion is issued pursuant to that request.

FACTS

The facts that have been presented to this Commission are as follows:

Mark Tuggle is the Representative for House District 81. His term ends this year and he is not seeking re-election. He has been offered the position of Chief of Staff for the Speaker of the House. The Office of the Speaker is an agency within the House of Representatives, yet nonetheless is budgeted separately and is considered by State Personnel to be the "employer" of

its employees as opposed to the Legislature, itself, being the employer. Therefore, Tuggle's employer would be the Speaker's office, not the Legislature.

QUESTION PRESENTED

Can a retiring member of the Alabama House of Representatives accept a position as the Chief of Staff of the Office of the Speaker of the House of Representatives (the Speaker's Office) without violating the revolving door provisions of Alabama's Ethics Law?

ANALYSIS

As a member of the Alabama House of Representatives, Mark Tuggle is a public official as that term is defined in Ala. Code § 36-25-1(27). His term ends in November and he is not running for re-election. The "Revolving Door" provisions of Alabama's Ethics Law, at Ala. Code §§ 36-25-13(a) and (b), provides that no former elected public official can lobby or otherwise represent clients, including his or her employer, before the legislative body of which he or she is a former member for a period of two years after he or she leaves office. The Code makes no distinction between public and private employers in this context.

In AO 2016-26, the Commission held that Mike Hill, a former elected public official in the House of Representatives, could accept a position with the Alabama Banking Department and represent the Department before the Legislature without violating the "Revolving Door" provisions of the Ethics Law, provided that in doing so he not use the opportunity to personally benefit himself, his family, or any business with which he is associated.¹

The reasoning supporting that decision is that the Act should not prevent former elected public officials who wish to remain in state service from being able to do so, provided that in doing so they not use the opportunity to personally benefit themselves, their family, or any business with which they are associated. This means that they may assume a position in state government that requires them to represent the interests of their new state agency before their old legislative body. Therefore, Mr. Tuggle, as was the case with Mike Hill, may be employed by the Speaker's office without violating Section 36-25-13 and may represent that employer's interests to the same extent held in Hill: that he "communicates information affecting the governmental agency which he represents" before the Legislature. In doing so, however, he may not use that opportunity to personally benefit himself, his family, or any business with which he is associated, in contravention of the Act.

¹ See also AO 2014-01.

The Revolving Door places lobbying restrictions on former elected public officials, as well.² The term “lobbyist” includes anyone who lobbies, whether for additional compensation or not, as a regular and usual part of employment. However, communicating information relating to policies or positions that will affect the Office of the Speaker is an exception to the definition of lobbying, (see Ala. Code § 36-25-1(21)(b)(8)), but lobbying for an agenda outside the interests of his employer is not.³

Therefore, Mr. Tuggle is prohibited by the “Revolving Door” from “promoting, opposing or in any manner influencing or attempting to influence the introduction, defeat or enactment of legislation”¹ other than those that affect the Speaker’s office. For example, he may not lobby the Legislature on behalf of any outside interest, including a principal’s agenda. He may communicate with lobbyists or principals, meet with them, and perform administrative duties as a normal part of his duties as Chief of Staff, but what he cannot do as a former elected official is communicate with other members of the Legislature on behalf of any outside interest, including principals, for the purpose of “promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation” or their legislative agenda before the Legislature. Moreover, Mr. Tuggle would be limited in the same manner as any other former member of the Legislature in terms of being denied floor privileges in either body in a lobbying capacity per Ala. Code § 36-25-23(b).

Finally, as with any public employee, he cannot use his position to provide illegal personal gain for himself or his public employer⁴ or use or disclose confidential information gained in the course of or by reason of his position as a legislator in any way that could result in financial gain to anyone other than his regular salary.⁵

² Lobby or lobbying. “The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body.” Ala. Code § 36-25-1(20)

³ Another exception to the definition of “lobbyist” is “an elected official on a matter which involves that person’s official duties.”

⁴ See Ala. Code §36-25-5(a)

⁵ See Ala. Code §36-25-8

CONCLUSION

A retiring member of the Alabama House of Representatives may accept a position as the Chief of Staff of the Office of the Speaker of the House of Representatives (the Speaker's Office) without violating the "Revolving Door" provisions of Alabama's Ethics Law, provided that he not engage in lobbying in contravention of the Act or violate the prohibition on the extension of floor privileges for lobbying which Ala. Code § 36-25-23(b) prohibits.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on August 1, 2018.



Jerry L. Fielding, Ret. Sr. Circuit Judge
Chair
Alabama Ethics Commission