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**ADVISORY OPINION NO. 2019-11**

Kim Fehl  
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Montgomery, AL 36104

Revolving Door/Re-employment With  
Former Public Agency

City employees who hold a position of authority may later seek re-employment with the governmental agency which previously employed them, the City of Montgomery without violating the "Revolving Door." All previous Advisory Opinions inconsistent with this Opinion are overruled. This opinion is limited to the facts presented here and only addresses the application of Ala. Code § 36-25-13(d). It does not address other sections such as Ala. Code §§ 36-25-5, 7 or 8 which could exist in any fact situation but were not raised by the facts presented in this opinion.

Dear Ms. Fehl:

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

### FACTS

The City of Montgomery joined RSA effective October 1, 2019. Prior to joining RSA, all City retirees were pensioners with the Employees' Retirement System which has a governing Board of Directors and is the retirement system for two separate entities - City of Montgomery and Montgomery Airport Authority. Many employees leave service for the City of Montgomery and go to work for state agencies and build a second retirement. However, the transition to RSA means that a City employee who retires at this point will now be restricted to the statutory limit for retired persons provided Ala. Code § 36-27-8.2. Therefore, long term City employees retired in August as a city pensioner so they would not be a pensioner under RSA and could work full time for a state agency without limitation on compensation. As a result, the City has positions open that were formerly filled by long term employees.

The City of Montgomery has divisions at the cabinet level that oversee the separate city departments. The director of General Services is a cabinet level position and General Services has several departments within that division. One position currently available is for the director of Parking Management Department which is a division of General Services. There is an applicant who formerly worked in one of the supervisory level positions for the Parks and Recreation Department which is a division under Leisure Services. The director of Leisure Services is a cabinet level position and there are several departments within Leisure Services.

The City/County of Montgomery Personnel Department is a separate entity from the City. It has a Board that makes rules and conducts hearings and handles all personnel matters for the City of Montgomery and Montgomery County. City employees are, with some exception, merit employees. The applicant in this case will be required to go through the open competitive register process with the City/County Personnel Department to determine if he is qualified for the position before he can be considered.

City employees are public employees under the Ethics Act. See Ala. Code § 36-25-1(26). The applicant in this case formerly held what would be considered a "position of authority" and is subject to the "Revolving Door" provisions in the ethics law. However, the position currently available is with a separate department. The Ethics Commission has previously issued an opinion in 2017 to the State of Alabama, Advisory Opinion No. 2017-03. The third question presented addresses "Department Heads" and "Deputy Department Heads" and whether they are considered positions of authority.

The second paragraph and first sentence of the third paragraph in the conclusion state:

A public employee, regardless of their job title, who held a position of authority with discretionary responsibilities within agency, may not be rehired by that agency as a Retired State Employee within the two-year period set out by the "Revolving Door" provisions of the Alabama Ethics Law.

Under the Revolving Door provisions, there is a per se prohibition against department heads and other enumerated categories of employees being hired back by their former agency for a period of two years.....

### **QUESTIONS PRESENTED**

May City employees who hold a position of authority in one department and who resign or retire later be employed in a separate city department over which they had no control or authority?

### **ANALYSIS**

Since 1996, the Ethics Commission has held that with respect to public employees, becoming re-employed by one's former public sector employer is covered by the two-year prohibition in the "Revolving Door." See Ala. Code § 36-25-13(d). In 2018, the Alabama Legislature formed The Code of Ethics Clarification and Reform Commission (hereinafter the "Revision Commission"). This study commission comprised 22 individuals from state government, law enforcement (including DAs, the Attorney General, and the Director of the Ethics Commission). The application of the "Revolving Door" to public employees returning to state government was addressed in the Revision Commission's work and the report it delivered to the Legislature. The Revision Commission considered similar laws from other jurisdictions as well as the language and legislative history of Alabama's own version. The Revision Commission concluded the following with respect to this specific issue:

Subsection (d) of the revolving door statute involves procurements and purchases by agencies or governmental bodies, as well as the approval of contracts, grants, or other awards. This subsection prohibits, for a two-year waiting period, certain former top level agency officials or employees and others within an agency who had significant authority or involvement in such activities from leaving their employment or position with the agency and then re-engaging with their former agency in any of these activities.

Based on the subsection's prohibitive language regarding "contracting" with former members or employees, this subsection has also been interpreted in the past to prohibit those same individuals from being either rehired or contractually engaged by their former public employer for the two-year waiting period. The consensus of the subcommittee was that this particular effect of statutory drafting and interpretation did not match the primary purpose and scope of concern of the revolving door prohibitions, and the subcommittee recommended statutory modifications that would clarify that the two-year revolving door waiting period under subsection (d) of the Revolving Door law does not apply to agencies or governmental bodies who rehire former employees or contract with former

employees or officials to provide personal or professional services on behalf the agency.<sup>1</sup>

The Ethics Commission agrees with the Revision Commission that this approach is consistent with both the language and legislative intent of Alabama's "Revolving Door" statute specifically subsection (d). Therefore, in answer to the specific questions presented, City employees who hold a position of authority in one department who separate from service may later seek and gain employment in a separate city department over which they had no control or authority even though they would be re-employed with the governmental agency which previously employed them, the City of Montgomery. To state it another way, this public employee who held a position of authority within the City of Montgomery may seek re-employment with the City of Montgomery, his or her previous public employer, without violating the "Revolving Door." All previous Advisory Opinions inconsistent with this Opinion are overruled. This opinion is limited to the facts presented here, and only addresses the application of Ala. Code § 36-25-13(d). It does not address other sections such as Ala. Code §§ 36-25-5, 7 or 8<sup>2</sup> which could exist in any fact situation but were not raised by the facts presented in this opinion. Likewise, it does not permit contracting with your former public employer on behalf of a private sector employer, which is prohibited for two years.

### CONCLUSION

City employees who hold a position of authority may later seek re-employment with the governmental agency which previously employed them, the City of Montgomery without violating the "Revolving Door." All previous Advisory Opinions inconsistent with this Opinion are overruled. This opinion is limited to the facts presented here and only addresses the

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<sup>1</sup> Copies of the entire Report, which contains, as well, the official position of the Attorney General, the Director of the Ethics Commission and the comments of other interests on these issues can be obtained from the Legislative Services Agency. LSA can be contacted at 11 S Union St # 620, Montgomery, AL 36130, phone: (334) 242-7950.

<sup>2</sup> Ala. Code § 36-25-5: No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.

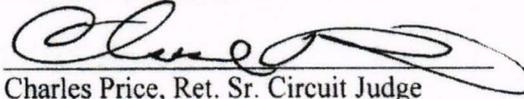
Ala. Code § 36-25-7: No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive anything for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

Ala. Code § 36-25-8: No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business.

application of Ala. Code § 36-25-13(d). It does not address other sections such as Ala. Code §§ 36-25-5, 7 or 8 which could exist in any fact situation but were not raised by the facts presented in this opinion.

**AUTHORITY**

By 4-0-1 vote of the Alabama Ethics Commission on December 4, 2019.



Charles Price, Ret. Sr. Circuit Judge  
Chair  
Alabama Ethics Commission