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May 3, 2000

ADVISORY OPINION NO. 2000-21

Keith A. Sanders
Program Specialist/Functional Analyst
Alabama Department of Human Resources
Child Support Enforcement Division
354 Williamson-Kindrick Trail
Eclectic, Alabama 36024

Revolving Door/Program Specialist/
Functional Analyst With The Alabama
Department Of Human Resources, Child
Support Enforcement Division, Accepting
Employment With Vendor Doing Business
With The Alabama Department Of Human
Resources And Providing Services For A
Division Of The Alabama Department Of
Human Resources.

A Program Specialist/Functional Analyst
with the Alabama Department of Human
Resources, Child Support Enforcement
Division, may accept employment with a
vendor providing services to the Alabama
Department of Human Resources, as he did
not hold a position of authority while
employed with the Alabama Department of
Human Resources.

While the Program Specialist/Functional
Analyst may accept employment with the
vendor providing services to the Alabama
Department of Human Resources, he may
not represent his employer before the

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Alabama Department of Human Resources
or service the contract with the Alabama
Department of Human Resources for a
period of two years after leaving public
service.

Dear Mr. Sanders:

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.

QUESTION PRESENTED

May a Program Specialist/Functional Analyst with the Alabama Department of Human Resources accept employment with a vendor who provides services to the Alabama Department of Human Resources and may he service that contract on behalf of his employer?

FACTS AND ANALYSIS

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

Keith A. Sanders is currently employed with the Alabama Department of Human Resources, Child Support Enforcement Division, as a Functional Analyst on the statewide child support computer project. He is classified as a Program Specialist, which is an entry level management position, and he states that he has absolutely no hiring or firing authority, nor does he have the authority to make purchases or grant contracts to specific vendors, nor does he regulate. This is confirmed by the department's job description for a program specialist/functional analyst.

Mr. Sanders is seeking employment with SCB Computer Technologies to work in a contract position with The Center For Information Services, a division of the Alabama Department of Human Resources. He states that this contract is not related to the ALECS project in any way.

The ALECS project is the continuing development and enhancement of the Child Support Enforcement Division's computer system, which is known as the Alabama Location and Enforcement Child Support System.

Mr. Sanders states that his only contact with SCB Computer Technologies has been with certain employees who work for SCB Computer Technologies. He states that he has merely made inquiries about the company with its employees and has had no contact with the company's management or personnel department.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(23) defines a public employee as:

"(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

Section 36-25-2(b) in pertinent part states:

"(b) An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided."

Section 36-25-1(8) defines a conflict of interest as:

"(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs."

Section 36-25-13(b) states:

"(b) No public employee shall serve for a fee as a lobbyist or otherwise represent

clients, including his or her employer before the board, agency, commission, or department, of which he or she is a former employee for a period of two years after he or she leaves such employment. For the purposes of this subsection, such prohibition shall not include a former employee of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.”

Advisory Opinion No. 98-44 holds, in pertinent part, that:

“An individual who, prior to his or her retirement, or otherwise leaving public service, held a position of authority with hiring and firing authority, purchasing or contracting authority, may not, for a period of two years after retiring or otherwise leaving public service, contract back, accept part-time employment or re-employment with the entity from which he or she retired or otherwise separated from public service.

An individual who, prior to his or her retirement, or otherwise leaving public service, did not hold a position of authority nor had the authority to make purchases, approve or grant contracts nor was involved in the hiring process, may accept part-time or re-employment with the entity from which he or she retired or otherwise separated from public service.”

As Mr. Sanders does not hold a position of authority as defined in Advisory Opinion No. 98-44, there is no prohibition in his going to work for SCB Computer Technologies. However, Section 36-25-13(b) makes no distinction between individuals holding a position of authority and those not holding a position of authority, but contains a strict prohibition against public employees representing their new employer before the board, agency, commission or department of which they were a former employee for a period of two years after leaving such public employment.

Based on the facts as provided and the above law, a Program Specialist with the Alabama Department of Human Resources, Child Support Enforcement Division, may accept employment with a vendor providing services to the Alabama Department of Human Resources, provided:

- 1) He did not hold a position of authority while employed with the Alabama Department of Human Resources; and,
- 2) He not represent his employer before the Alabama Department of Human Resources or service the contract with the Alabama Department of Human Resources for a period of two years after leaving public service.

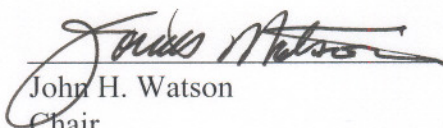
CONCLUSION

A Program Specialist with the Alabama Department of Human Resources, Child Support Enforcement Division, may accept employment with a vendor providing services to the Alabama Department of Human Resources, as he did not hold a position of authority while employed with the Alabama Department of Human Resources.

While the Program Specialist may accept employment with the vendor providing services to the Alabama Department of Human Resources, he may not represent his employer before the Alabama Department of Human Resources or service the contract with the Alabama Department of Human Resources for a period of two years after leaving public service.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on May 3, 2000.



John H. Watson
Chair
Alabama Ethics Commission