May 3, 2000

ADVISORY OPINION NO. 2000-25

Carolyn Hendrix
Employee
Cullman County Board of Education
Workplace Education
435 County Road 1107
Vinemont, Alabama 35179-8950

Conflict Of Interests/Employee Of Cullman County Board Of Education Selling Educational Software Packages To Public Institutions.

An employee of the Cullman County Board of Education may sell an educational software package to public institutions; provided, that all work involved in the outside employment is done on her own time, whether it is after hours, weekends, etc.; that there is no use of any public time, equipment, facilities, materials, human labor or other public property under her discretion or control to assist her in either selling the educational software or in obtaining the opportunities; that she not sell the software package to the Cullman County Board of Education; and, provided further, that copies of any contracts entered into between Thinking Media and a public entity which are paid in whole or in part out of state, county or municipal funds, are filed with the Ethics Commission within ten days of the contracts being entered into.
Dear Ms. Hendrix:

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 an employee of the Cullman County Board of Education, Workplace Education Division, sell an educational software package on behalf of a business to public entities?

**FACTS AND ANALYSIS**

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

Carolyn Hendrix is employed with the Cullman County Board of Education, Workplace Education Division. Her duties include training adult education personnel in the curriculum development process, assisting them with needs assessment and curriculum development and monitoring their programs.

She also works on a consulting basis as an ACT Work Keys Certified Job Profiler. She is an independent profiler in the fact that she holds her own license. She states that these profiles are done on her off-days and weekends.

Job profiling is done on a consulting basis with companies which have contacted her about conducting a job profile. Profilers observe a particular job and use the information gathered to develop a task list, edit the task list with job incumbents and review skills in order for job incumbents to set entry and effective skill levels for their job classification. Job profiles are used by the company for making hiring, promotion and training decisions.

Ms. Hendrix recently met the owners of Thinking Media at a Work Keys Conference and has been asked to sell an educational software package they have developed to be used in conjunction with Work Keys. The Cullman County Board of Education has no dealings with Thinking Media. The primary market is two and four-year colleges, technical schools and businesses in Alabama. She states that the sale of such a product would be done on her off-days and weekends through personal contacts, corporate contacts, web sites and at Work Keys Conferences and trade shows.
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 36-25-5(a) states:

“(a) 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.”

Section 36-25-5(c) states:

“(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy.”

Section 36-25-11 states:

“Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into.”

Under the facts as provided and the above law, Ms. Hendrix would not be prohibited from selling the educational software package on her own time to other public entities; provided, that she not use any time, labor, facilities, equipment, etc., belonging to the Cullman County Board of Education to assist her in either selling the product or in obtaining the opportunities, nor may she sell the product to the Cullman County Board of Education with which she is employed.

In addition, copies of any contracts entered into between Thinking Media and a public entity which are paid in whole or in part out of state, county or municipal funds, must be filed with the Ethics Commission within ten days of the contracts being entered into.
CONCLUSION

An employee of the Cullman County Board of Education may sell an educational software package to public institutions; provided, that all work involved in the outside employment is done on her own time, whether it is after hours, weekends, etc.; that there is no use of any public time, equipment, facilities, materials, human labor or other public property under her discretion or control to assist her in either selling the educational software or in obtaining the opportunities; that she not sell the software package to the Cullman County Board of Education; and, provided further, that copies of any contracts entered into between Thinking Media and a public entity which are paid in whole or in part out of state, county or municipal funds, are filed with the Ethics Commission within ten days of the contracts being entered into.

AUTHORITY

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

John H. Watson
Chair
Alabama Ethics Commission