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STATE OF ALABAMA
ETHICS COMMISSION

MAILING ADDRESS

P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS

RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104



James L. Sumner, Jr.
Director

TELEPHONE (334) 242-2997
FAX (334) 242-0248
WEB SITE www.ethics.alalinc.net

June 7, 2000

ADVISORY OPINION NO. 2000-28

Philip Tyler
Deputy Commissioner
Field Administration
State Department of Human Resources
1112 Knollwood Court
Auburn, Alabama 36830

Conflict Of Interests/Deputy Commissioner
Of State Department Of Human Resources
In Charge Of Field Administration Practicing
Law With Individual Who Owns County
Department Of Human Resources' Building
And Who Provides Legal Services To
County Department Of Human Resources.

A Deputy Commissioner for the State
Department of Human Resources in charge
of Field Administration may not accept
employment with an attorney who owns the
building occupied by the Lee County
Department of Human Resources and who
provides legal services to the county
Department of Human Resources.

A Deputy Commissioner for the State
Department of Human Resources in charge
of Field Administration may practice law on
his own time; provided, that all work done in
conjunction with his private practice of law
is done on his own time, whether it is after
hours, weekends, etc.; that there is no

use of public equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in conducting his private law practice or in obtaining clients; and, in addition, that no confidential information obtained in the course of his employment with the Department of Human Resources is used to assist him in performing legal work or in obtaining business opportunities.

A Deputy Commissioner for the State Department of Human Resources in charge of Field Administration may not represent clients in any matters that fall under the authority of the state or county Departments of Human Resources or with whom he has had business dealings through either the state or county Departments of Human Resources or individuals who are otherwise clients of the Department of Human Resources.

Dear Mr. Tyler:

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 the Deputy Commissioner for Field Administration with the State Department of Human Resources, who has recently been licensed to practice law in the State of Alabama, accept employment on a part-time basis with an attorney who owns the Department of Human Resources' building in Lee County, Alabama, and who does legal work for the Lee County Department of Human Resources?

FACTS AND ANALYSIS

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

Philip Tyler is a Deputy Commissioner with the State Department of Human Resources. He is in charge of Field Administration. His primary job is to evaluate the job performance of the various county directors. The directors are evaluated according to the performance of their staff and the programs the county department administers. The programs include child protective services, food stamps, child support, and TANF (Temporary Assistance to Needy Families). Mr. Tyler states that he is also over the child protective services program for the department.

Generally speaking, the State Department of Human Resources provides supervision to the 67 county departments. There is a Commissioner appointed by the Governor, and three Deputy Commissioners who are merit system employees. There is a Deputy Commissioner for Fiscal and Administrative Services who handles the personnel and budgeting functions of the entire department (both county and state), including monitoring and control of revenue sources and spending, as well as the payment of rent and maintenance of state and county buildings. His responsibilities also include the payment of local attorneys who do work for the county departments.

There is also a Deputy Commissioner for Programs who is responsible for writing the policies (rules and regulations) for the programs administered in the county. These programs include food stamps, child support, and TANF (welfare payments and JOBS referral & training).

Mr. Tyler, as has been previously stated, is the third Deputy Commissioner in charge of Field Administration.

Mr. Tyler has served as Deputy Commissioner for almost three and one-half years, and he states that no issue involving local attorneys has come to his attention during that time. He states that these matters are handled at the local level. For example, if the director in Lee County were to seek his help or advice concerning the attorney who has asked him to do part-time work, the matter could be referred to one of the other Deputy Commissioners for handling. And, in addition, he states that any inquiries he receives relating to the Lee County building are referred to the Deputy Commissioner for Fiscal and Administrative Services.

Mr. Tyler has recently passed the State Bar Examination and is licensed to practice law in the State of Alabama. An attorney in Lee County, who does legal work for the county Department of Human Resources and who owns the building occupied by the county Department of Human Resources, has asked him to accept employment on a part-time basis.

As relates to the use of local attorneys by the county departments, the attorneys make a request to the county director to be placed on an approved list of attorneys for the county. The request is then sent to the department's legal office for approval. If approved, the director makes a list available to the social workers (mainly those involved in child protective services), and the social workers contact the attorneys on the list as the need for an attorney arises in particular areas.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24), defines a public official as:

"(24) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2."

Section 36-25-1(2) defines a business with which the person is associated as:

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business."

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 36-25-8 states:

"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."

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 36-25-5(e) states:

"(e) No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity."

As a Deputy Commissioner for the State Department of Human Resources, Mr. Tyler is in a unique position whereby he is directly involved in, not only the operations of the State

Department of Human Resources, but to some degree, the county Departments of Human Resources, as he evaluates their performance. In addition, it appears that social workers employed by the various county Departments of Human Resources, who fall under the umbrella of the State Department of Human Resources, are responsible for selecting approved attorneys to perform legal services for the county departments. As Deputy Commissioner, Mr. Tyler is in a position to evaluate those very individuals in the Lee County Department of Human Resources who are responsible for determining what attorneys get DHR business.

Likewise, the fact that the attorney with whom he is interested in accepting part-time employment, owns the building occupied by Lee County Department of Human Resources, presents another conflict. Mr. Tyler has previously stated that he has received inquiries relating to the Lee County building and generally refers them to the Deputy Commissioner for Fiscal and Administrative Services.

Based on the above law and the facts as provided, a Deputy Commissioner for the State Department of Human Resources in charge of Field Administration may not accept employment with an attorney who owns the building occupied by the Lee County Department of Human Resources and who provides legal services to the county Department of Human Resources.

However, a Deputy Commissioner for the State Department of Human Resources in charge of Field Administration may practice law on his own time; provided,

- 1) that all work done in conjunction with his private practice of law is done on his own time, whether it is after hours, weekends, etc.;
- 2) that there is no use of public equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in conducting his private law practice or in obtaining clients;
- 3) that he not represent clients in any matters that fall under the authority of the state or county Departments of Human Resources or with whom he has had business dealings through either the state or county Departments of Human Resources or individuals who are otherwise clients of the Department of Human Resources;
- 4) that he not accept employment with an attorney who owns the building occupied by the Lee County Department of Human Resources and who provides legal services to the county Department of Human Resources; and,
- 5) that no confidential information obtained in the course of his employment with the Department of Human Resources is used to assist him in performing legal work or in obtaining business opportunities.

CONCLUSION

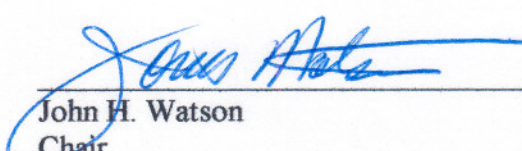
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AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on June 7, 2000.



John H. Watson
Chair

Alabama Ethics Commission