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September 6, 2000

ADVISORY OPINION NO. 2000-47

Rex Vaughn
Chief
Office of Prevention
Department of Mental Health/Mental Retardation
Division of Substance Abuse Services
221 Daleshire Place
Montgomery, Alabama 36117

Revolving Door/Chief Of Office Of Prevention, Department Of Mental Health/Mental Retardation, Division Of Substance Abuse Services, Accepting Employment With Consultant Who Contracts With Department Of Mental Health/Mental Retardation.

The Chief of the Office of Prevention of the Department of Mental Health/Mental Retardation, Division of Substance Abuse Services, may not, for a period of two years after retiring from the Department of Mental Health and Mental Retardation, accept employment with a consultant under contract with the Department of Mental Health/Mental Retardation, as he recommended the consultant to the Department of Mental Health/Mental Retardation, wrote the Request for Proposal in conjunction with the consultant, and generally served as the middle-man between the consultant and the Department of Mental Health/Mental Retardation.

Dear Mr. Vaughn:

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 former Chief of the Office of Prevention of the Department of Mental Health/Mental Retardation, Division of Substance Abuse Services, accept employment with a consultant under contract with the Department of Mental Health/Mental Retardation?

FACTS AND ANALYSIS

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

Rex Vaughn serves as the Chief of the Office of Prevention of the Department of Mental Health/Mental Retardation, Division of Substance Abuse Services. He is responsible for administering the federal block grant prevention funds coming to the Department of Mental Health/Mental Retardation from the Department of Health and Human Services (HHS).

Mr. Vaughn states that his duties include: monitoring non-profit community agencies for contract compliance, developing regulatory guidelines for their operation, providing technical assistance to the programs, conducting training sessions and co-chairing the peer review committee that reviews the prevention responses to the annual Request for Proposals (RFP) for the type of prevention services to be provided for their respective funding award from the Department of Mental Health/Mental Retardation.

Mr. Vaughn further states that the funding awards to these agencies are based upon a predetermined per-capita formula allocation and published annually within the RFP. He states that he does not negotiate any of these contract amounts, nor does he sign any contracts/agreements with these agencies awarding these funds, nor has he monitored any of these programs within the past year.

For the past year, Mr. Vaughn has also served as the Acting Director of the Governor's Office of Drug Abuse Policy. He states that in this capacity he has administered the 20% Governor's Safe and Drug Free discretionary funds. He administers this program and uses the same peer committee described above and scores each proposal in accordance with pre-determined criteria set forth within the Request for Proposal. He states that while he does not

conduct any program monitoring on these programs, negotiates any of these contracts, nor signs any contract/agreement, he has provided technical assistance to these agencies in how to interpret the RFP and for what the federal funds could and could not be used.

Mr. Vaughn states that an independent consultant is doing some contract work for the Department of Mental Health/Mental Retardation on the Governor's program; writing the Request for Proposal, conducting state and regional training sessions to prospective respondents to the RFP, providing technical assistance, reviewing the grants and conducting the year-end evaluation of these programs.

Mr. Vaughn states that he has known this consultant for approximately 12 years, and that he has been asked by the consultant to do some contract work for him upon his retirement in September, 2000. Mr. Vaughn states that some of the contract work for the consultant, upon his retirement, would involve future contracts that the consultant may negotiate with the Department of Mental Health/Mental Retardation and would involve Mr. Vaughn's conducting monitoring visits for program compliance and/or providing technical assistance to some of these programs regarding program development, staff development, program evaluation and program compliance with state and federal guidelines.

Mr. Vaughn states that in June of 1999, when the former Director of the Governor's grant operation was fired, he was asked to become the interim director and to get the State into compliance with federal guidelines. He states that the consultant had been under contract with the Department of Mental Health/Mental Retardation in years past to help administer the program and was familiar with the regulations.

Shortly after becoming interim director, Mr. Vaughn recommended the consultant to the Commissioner of the Department of Mental Health/Mental Retardation and was asked to contact the consultant on behalf of the Commissioner.

The consultant gave Mr. Vaughn a quote for his fee, which was approved by the Commissioner. Mr. Vaughn states that he was the middle-man in these discussions, and that he and the consultant wrote the Request for Proposal, conducted the training sessions and reviewed the proposals.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-13(a) states:

"(a) No public official shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, department, or legislative body, of which he or she is a former member for a period of two years after he or she leaves such membership. For the purposes of

this subsection, such prohibition shall not include a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.”

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.”

Section 36-25-13(c) states:

“(c) No public official, director, assistant director, department or division chief, purchasing or procurement agent having the authority to make purchases, or any person who participates in the negotiation or approval of contracts, grants, or awards or any person who negotiates or approves contracts, grants, or awards shall enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which the person was a member or employee for a period of two years after he or she leaves the membership or employment of such governmental agency.”

Section 36-25-13(d) states:

“(d) No public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business, corporation, partnership, or individual shall within two years of his or her departure from such employment solicit or accept employment with such private business, corporation, partnership, or individual.”

The “Revolving Door” provisions of the Alabama Ethics Law prohibit public officials and public employees from certain activities once they separate from public service.

In the facts before the Commission, it appears that Mr. Vaughn has had direct dealings with the consultant on behalf of the Department of Mental Health/Mental Retardation prior to his separation from public service in that, he recommended the consultant to the Commissioner of the Department of Mental Health/Mental Retardation and assisted in drafting the Request for Proposal.

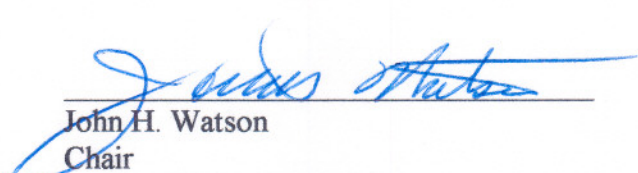
Based on the facts as provided and the above law, the Chief of the Office of Prevention of the Department of Mental Health/Mental Retardation, Division of Substance Abuse Services, may not, for a period of two years after retiring from the Department of Mental Health and Mental Retardation, accept employment with a consultant under contract with the Department of Mental Health/Mental Retardation, as he recommended the consultant to the Department of Mental Health/Mental Retardation, wrote the Request for Proposal in conjunction with the consultant, and generally served as the middle-man between the consultant and the Department of Mental Health/Mental Retardation.

CONCLUSION

The Chief of the Office of Prevention of the Department of Mental Health/Mental Retardation, Division of Substance Abuse Services, may not, for a period of two years after retiring from the Department of Mental Health and Mental Retardation, accept employment with a consultant under contract with the Department of Mental Health/Mental Retardation, as he recommended the consultant to the Department of Mental Health/Mental Retardation, wrote the Request for Proposal in conjunction with the consultant, and generally served as the middle-man between the consultant and the Department of Mental Health/Mental Retardation.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on September 6, 2000.



John H. Watson

Chair

Alabama Ethics Commission