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September 6, 2000

ADVISORY OPINION NO. 2000-48

Pamela M. Baker
Commissioner
Department of Children's Affairs
RSA Union Building
100 North Union Street, Suite 500
Montgomery, Alabama 36130

Personal Gain/Commissioner And Deputy
Commissioner Of The Department Of
Children's Affairs Having State Cellular
Phone With A Separate Private Number For
Personal Use.

The Commissioner and Deputy
Commissioner of the Department of
Children's Affairs may have a State cellular
phone with a separate private number;
provided, that the private number and the
State number are segregated from each other
and are billed separately and distinctly from
each other; that the personal use is
reasonable and kept to a minimum; and, that
any additional costs relating to the second
number are paid by the Commissioner and
the Deputy Commissioner.

Dear Commissioner Baker:

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 Commissioner and Deputy Commissioner for the Department of Children's Affairs have a State cellular phone with a separate private number for personal business?

FACTS AND ANALYSIS

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

Pamela M. Baker is the Commissioner of the Department of Children's Affairs. She and the Deputy Commissioner each have a cellular phone for conducting State business. The cellular phone has the capability of having two separate numbers. The cellular company has informed Ms. Baker that they can set up each number on a separate bill. The State cellular number would be billed to the Department of Children's Affairs with detailed billings, and the private number would be billed to the Commissioner and Deputy Commissioner's home addresses.

Ms. Baker states that this would eliminate the need to carry two different cellular phones when they are out of the office.

The Alabama Ethics Law, Code of Alabama, 1975, 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."

While the Ethics Law prohibits the use of public time, labor, equipment, facilities, etc. for the private benefit of the public official or public employee, where his or her financial interest would be materially affected, it is not unreasonable to expect a public official and/or a public employee to be required to conduct a certain amount of personal business while being paid by the State of Alabama. However, the conducting of personal business on State time must be reasonable and must be kept to a minimum.

Under the facts as provided, it is reasonable for the Commissioner and Deputy Commissioner of the Department of Children's Affairs to have a State cellular phone with a separate and distinct private number that is billed to their home address and not to the State of Alabama; provided, the use of the private number is kept to a minimum and is reasonable in nature.

Based on the above law and the facts as provided, the Commissioner and Deputy Commissioner of the Department of Children's Affairs may have a State cellular phone with a separate private number; provided:

- 1) that the private number and the State number are segregated from each other and are billed separately and distinctly from each other;
- 2) that the personal use is reasonable and kept to a minimum; and,
- 3) that any additional costs relating to the second number are paid by the Commissioner and the Deputy Commissioner.

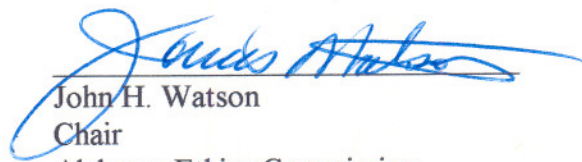
CONCLUSION

The Commissioner and Deputy Commissioner of the Department of Children's Affairs may have a State cellular phone with a separate private number; provided, that the private number and the State number are segregated from each other and are billed separately and distinctly from each other; that the personal use is reasonable and kept to a minimum; and, that any additional costs relating to the second number are paid by the Commissioner and the Deputy Commissioner.

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AUTHORITY

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


John H. Watson
Chair
Alabama Ethics Commission