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November 1, 2000

ADVISORY OPINION NO. 2000-60

Charles H. Baugh
Director of Enforcement
Alabama Alcoholic Beverage Control Board
1508 County Road 51
Prattville, Alabama 36067

Revolving Door/Director Of Enforcement Of
The Alabama Alcoholic Beverage Control
Board (ABC Board) Accepting Employment
With Brewing Company.

The Director of Enforcement of the ABC
Board may, upon his retirement, accept
employment with the Pabst Brewing
Company, as he did not personally
participate in the direct regulation, audit or
investigation of Pabst Brewing Company in
his official capacity with the ABC Board.

The Director of Enforcement of the ABC
Board may not, for a period of two years
after retiring from the ABC Board and
accepting employment with the Pabst
Brewing Company, represent the Pabst
Brewing Company before the ABC Board or
any of its divisions including, but not limited
to, the Enforcement Division.

Dear Mr. Baugh:

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 Director of Enforcement of the ABC Board, upon his retirement, accept employment with the Pabst Brewing Company?

FACTS AND ANALYSIS

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

Charles H. Baugh is the Director of Enforcement of the Alabama Alcoholic Beverage Control Board (ABC Board). As Director, he oversees all licensing and enforcement functions as prescribed by law.

Mr. Baugh states that Title 28-3A-5 through 28-3A-20 controls how his Division functions. This section states in part that:

“Upon receipt of the application (etc.), the Board shall grant and issue the appropriate license.”

Mr. Baugh states that this removes any discretion on his part and gives the ultimate authority to the local governing authority. He states that in the case of fines and disciplinary cases, any disputed claims go before the three-member board that oversees the ABC Board.

Mr. Baugh states that, as Director of the Enforcement Division, he has not participated in the direct regulation or investigation of any entity within the manufacturing/brewing industry. He does not determine what products are sold in the State, and the products of Pabst Brewing Company are not sold to, nor by, the ABC Board.

Mr. Baugh further states that he recalls having no business contacts with the Pabst Brewing Company in his official capacity and has double-checked to make certain that he has had no dealings with them for at least two years. The ABC Board secretary, who sets the Board's agenda, has confirmed that Pabst Brewing Company had not been before the ABC Board in the past two years.

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."

Sections 36-25-13(b), (c) and (d) state:

"(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."

"(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."

"(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."

While he does not recall having any contact with the Pabst Brewing Company in his official capacity as Director of the Enforcement Division of the ABC Board, Mr. Baugh is certain that he had no contact with them in the past two years.

On March 4, 1998, the Commission rendered Advisory Opinion No. 98-16, which held in pertinent part that:

“A public official or a public employee may not, for a period of two years after leaving public employment or within two years after personally participating in the direct regulation, audit or investigation of a private entity, whichever time period is longer, accept employment with that private entity.”

Therefore, there would be no prohibition in Mr. Baugh's retiring from the ABC Board and accepting employment with the Pabst Brewing Company.

However, for a period of two years after retiring from the ABC Board, Mr. Baugh may not represent Pabst Brewing Company before the ABC Board or any of its various divisions.

Based on the facts as provided and the above law, the Director of Enforcement of the ABC Board may, upon his retirement, accept employment with the Pabst Brewing Company, as he did not personally participate in the direct regulation, audit or investigation of Pabst Brewing Company in his official capacity with the ABC Board.

Further, the Director of Enforcement of the ABC Board may not, for a period of two years after retiring from the ABC Board and accepting employment with the Pabst Brewing Company, represent the Pabst Brewing Company before the ABC Board or any of its divisions including, but not limited to, the Enforcement Division.

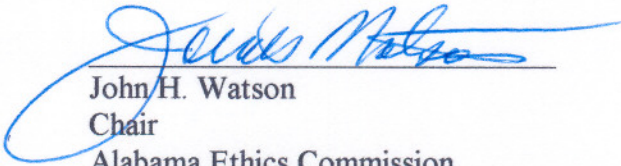
CONCLUSION

The Director of Enforcement of the ABC Board may, upon his retirement, accept employment with the Pabst Brewing Company, as he did not personally participate in the direct regulation, audit or investigation of Pabst Brewing Company in his official capacity with the ABC Board.

The Director of Enforcement of the ABC Board may not, for a period of two years after retiring from the ABC Board and accepting employment with the Pabst Brewing Company, represent the Pabst Brewing Company before the ABC Board or any of its divisions including, but not limited to, the Enforcement Division.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on November 1, 2000.



John H. Watson

Chair

Alabama Ethics Commission