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January 10, 2001

ADVISORY OPINION NO. 2001-01

L. D. Owen, III
City Attorney
City of Bay Minette
P.O. Box 1208
Bay Minette, Alabama 36507

Revolving Door/City Of Bay Minette Hiring
Former City Clerk On Part-Time Basis As A
Contract Employee.

The City Clerk of the City of Bay Minette may not, for a period of two years after retiring, accept part-time employment with the City of Bay Minette as a part-time employee or in another classification with the City, as the former City Clerk held a position of authority with the City of Bay Minette prior to his retirement.

Dear Mr. Owen:

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 City of Bay Minette hire the former City Clerk on a part-time basis as a contract employee?

FACTS AND ANALYSIS

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

Tommy M. Langham is the City Clerk of the City of Bay Minette, Alabama, and may retire after many years of service. Because of his expertise, the City may wish to hire him back on a part-time basis or as a contract employee. Based on this fact, the City of Bay Minette has requested this Advisory Opinion.

In the City of Bay Minette, the City Clerk provides a variety of routine and complex supervisory, clerical, and administrative services. His primary duties are set-out in the position description of City Clerk (attached hereto).

In the event the present City Clerk retires, it is anticipated that the City may wish to hire this person on a part-time basis or on a contract basis working a schedule at a set rate of pay. In either case, this person would be supervised by the City Administrator and would be responsible for assisting in the training of a new City Clerk, managing the Civic Center rental and usage, providing customer service representation, and other duties as assigned. In addition, this person would no longer sign checks, execute contracts, ordinances, minutes, resolutions, or other official documents, and would not serve as personnel officer, or perform any of the statutory duties of a City Clerk.

In the job description attached, the position of City Clerk in Bay Minette has many duties. Among those duties, the City Clerk is the City Personnel Officer, monitors business licenses and revenues received by the City, as well as issuing business licenses and other regulatory licenses.

As part of the duties of City Clerk, the City Clerk presides over pre-termination hearings and makes recommendations on terminations to the Mayor.

On November 4, 1998, the Commission rendered Advisory Opinion No. 98-44, which defined a position of authority as:

“An individual who, prior to his or her retirement, or otherwise leaving public service, held a position of authority with hiring and firing authority, purchasing or contracting authority, may not, for a period of two years after retiring or otherwise leaving public service, contract back, accept part-time employment or re-employment with the entity from which he or she retired or otherwise separated from public service.”

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 36-25-1(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 36-25-13(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.”

Based on the information as provided, it would appear that the City Clerk of the City of Bay Minette does not serve in a merely ministerial capacity, but does hold a position of authority.

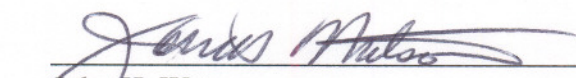
Based on the facts as provided and the above law, the City Clerk of the City of Bay Minette may not, for a period of two years after retiring, accept part-time employment with the City of Bay Minette as a part-time employee or in another classification with the City, as the former City Clerk held a position of authority with the City of Bay Minette prior to his retirement.

CONCLUSION

The City Clerk of the City of Bay Minette may not, for a period of two years after retiring, accept part-time employment with the City of Bay Minette as a part-time employee or in another classification with the City, as the former City Clerk held a position of authority with the City of Bay Minette prior to his retirement.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on January 10, 2001.


John H. Watson
Chair
Alabama Ethics Commission