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March 7, 2001

**ADVISORY OPINION NO. 2001-17**

Ella B. Bell  
Member, District V, Alabama State Board of Education  
Administrator, Alabama Department of Mental Health/Mental Retardation  
2634 Airwood Drive  
Montgomery, Alabama 36108

Conflict Of Interests/Administrator With  
Alabama Department Of Mental  
Health/Mental Retardation Also Serving On  
State Board Of Education.

An Administrator with the Alabama  
Department of Mental Health/Mental  
Retardation, who is also an elected member  
of the Alabama State Board of Education,  
must take leave time from the Department of  
Mental Health/Mental Retardation while  
performing her responsibilities as a member  
of the State Board of Education, as the  
Board of Education position is a  
compensated position.

An Administrator with the Alabama  
Department of Mental Health/Mental  
Retardation, who is also an elected member  
of the Alabama State Board of Education,  
may use a limited amount of time and other  
resources belonging to the Department of  
Mental Health/Mental Retardation while  
serving as a member of the Alabama State

Board of Education and performing the duties of that office. However, this limited use must not interfere with her primary responsibilities as an employee of the Department of Mental Health/Mental Retardation.

Dear Ms. Bell:

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.

#### **QUESTIONS PRESENTED**

- 1) Must a member of the Alabama State Board of Education, who is also an Administrator with the Alabama Department of Mental Health/Mental Retardation, use accrued leave time from the Department of Mental Health/Mental Retardation while performing duties for the State Board of Education?
- 2) May a member of the Alabama State Board of Education, in the performance of her duties as a State Board of Education member, use furniture, telephones, and other equipment belonging to the Department of Mental Health/Mental Retardation?

#### **FACTS AND ANALYSIS**

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

Ella B. Bell took the oath of office as the elected representative of District V on the Alabama State Board of Education on January 11, 2001. The Alabama State Board of Education is a constitutional body, responsible under Section 16 of the Code of Alabama for public education in the State of Alabama, including kindergarten, elementary, and secondary public schools, as well as all public two-year colleges or other institutions of higher education without separate governing bodies. Members of the Alabama State Board of Education are elected by voters within eight Board districts, and each Board member serves a four-year term of office. Members of the Alabama State Board of Education may seek re-election for an unlimited number of terms.

Pursuant to statute, members of the Alabama State Board of Education are entitled to receive ten dollars (\$10) per day as compensation for service on the Board, up to a maximum of 25 days per year. It is within the discretion of each Board member to waive such compensation. In addition, members of the Alabama State Board of Education are entitled by statute to receive \$1,500 per month as an expense allowance to cover expenses incurred in service to the State of Alabama as a member of the Board. Members of the Alabama State Board of Education are not provided by the State of Alabama with dedicated offices, telephones, other space, or equipment to be used in serving the State of Alabama in that capacity. Members of the Alabama State Board of Education do not accrue leave for their service to the State.

The Alabama State Board of Education generally meets two days each month. On the second Thursday of each month, the Board conducts official K-12 business and has a work session for postsecondary matters. On the fourth Thursday of each month, the Board conducts official postsecondary business and has a work session for K-12 matters. There may be additional meetings, work sessions, retreats, and other events held on an infrequent basis throughout the year. In the course of overseeing public education for the State of Alabama, Board members will be engaged in various business for the good of the State, including: making and receiving telephone calls from constituents and other interested parties inside of and outside of their districts; sending and receiving written correspondence relative to matters to come before the Board; making appearances and speeches regarding public education; and, traveling throughout their districts and the entire State to gather, provide, and receive information regarding public education.

Ms. Bell has been employed by the Department of Mental Health/Mental Retardation since September 6, 1978. Her current job title is Administrator, and she receives a salary, leave, and other benefits to which employees of the State of Alabama are entitled. She has an office located in the RSA Union Building in Montgomery, Alabama. That office has furniture and equipment, including telephone and facsimile lines and equipment, used to support the business of the Department of Mental Health/Mental Retardation. She states that her job with the Department of Mental Health/Mental Retardation involves the following activities and responsibilities: administer/direct the Alabama Family Trust; coordinate the departmental Speakers Bureau; and chair the annual Combined Charities Campaign. Ms. Bell would like to know whether or not it would be permissible under the Alabama Ethics Law for her to conduct business of the Alabama State Board of Education, without the requirement of using leave accrued through the Department of Mental Health/Mental Retardation. She would also like to know whether or not it would be permissible under the Alabama Ethics Law for her to use telephones and office equipment belonging to the Department of Mental Health/Mental Retardation in handling business of the Alabama State Board of Education.

Ms. Bell states that it would be an extreme inconvenience for her to have to handle Board matters away from the office. She states that the use of equipment or office space would likely include some long-distance telephone calls to conduct the business of the Alabama State Board of Education.

Ms. Bell is aware that the Alabama Ethics Law prohibits the use of public equipment, time, and other resources for the personal benefit of a public official, public employee, or his or her family. She states that she believes that any benefit derived from the limited use of State time and resources, for the purposes described in her request for an opinion, would enure to the State of Alabama, as the business would be conducted on behalf of the Alabama State Board of Education, and, therefore, the citizens of the State of Alabama.

Ms. Bell asks further, provided that the use of equipment, time, and other resources of the Department of Mental Health/Mental Retardation are limited and do not interfere with performing her duties as an employee of the Department of Mental Health/Mental Retardation, and since the benefit would enure to the State of Alabama, as a result of her service on the Alabama State Board of Education, and not to her personally, is such use permissible and may she perform such service without the necessity of using accrued leave?

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(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 36-25-5(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 36-25-2(b), in pertinent part states:

“(b) An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.”

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."

In the facts as provided, Ms. Bell receives an expense allowance in the amount of \$1,500 per month for her service as a member of the Alabama State Board of Education. This expense allowance is designed to allow her to obtain office space, telephones, etc., for her use while serving the Alabama State Board of Education.

As the Alabama State Board of Education position is a compensated position, Ms. Bell must take leave time from the Department of Mental Health/Mental Retardation while performing the functions of and serving on the State Board of Education.

In December of 1999, the Commission rendered Advisory Opinion No. 99-59, which held that:

"A District Court Judge, who is also a JAG Officer with the Alabama National Guard may use a limited amount of State office space and equipment to perform some of his duties with the Alabama National Guard; provided, that the use is limited and does not interfere with performing the duties of a District Court Judge, as the benefit enures to the State of Alabama and not to the District Court Judge/JAG Officer; and, that the limited use amount of State office space and equipment is not done while on active duty."

The Commission further stated in that opinion:

"While the Ethics Law prohibits the use of public equipment, time and other resources for the personal benefit of a public official, public employee or his or her family member, in the situation before the Commission, any benefit derived from the limited use of State time and resources would enure to the State of Alabama, as the business would be conducted on behalf of the Alabama National Guard, and therefore, the residents of the State of Alabama."

In the facts before the Commission, it would not violate the Alabama Ethics Law for Ms. Bell to use limited time and other resources belonging to the Department of Mental Health/Mental Retardation while serving as a member of the Alabama State Board of Education and performing the duties of that office. However, this limited use must not interfere with her primary responsibilities as an employee of the Department of Mental Health/Mental Retardation.

Based on the facts as provided and the above law, an Administrator with the Alabama Department of Mental Health/Mental Retardation, who is also an elected member of the Alabama

State Board of Education, must take leave time from the Department of Mental Health/Mental Retardation while performing her responsibilities as a member of the State Board of Education, as the Board of Education position is a compensated position.

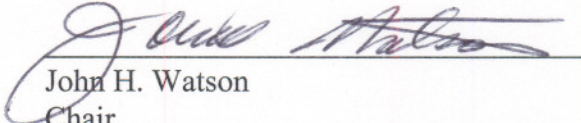
### CONCLUSION

An Administrator with the Alabama Department of Mental Health/Mental Retardation, who is also an elected member of the Alabama State Board of Education, must take leave time from the Department of Mental Health/Mental Retardation while performing her responsibilities as a member of the State Board of Education, as the Board of Education position is a compensated position.

An Administrator with the Alabama Department of Mental Health/Mental Retardation, who is also an elected member of the Alabama State Board of Education, may use a limited amount of time and other resources belonging to the Department of Mental Health/Mental Retardation while serving as a member of the Alabama State Board of Education and performing the duties of that office. However, this limited use must not interfere with her primary responsibilities as an employee of the Department of Mental Health/Mental Retardation.

### AUTHORITY

By 4-1 vote of the Alabama Ethics Commission on March 7, 2001.

  
John H. Watson  
Chair  
Alabama Ethics Commission