



STATE OF ALABAMA ETHICS COMMISSION



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October 3, 2001

ADVISORY OPINION NO. 2001-47

Ms. Terrie Reid
Interim Director
Child Day Care Partnership
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Conflict Of Interest/Alabama Department Of
Human Resources Hiring Licensed Child
Day Care Center Provider As Child
Development Consultant.

The Alabama Department of Human
Resources may not hire a licensed child day
care center provider as a Child Development
Consultant while the individual or a member
of her family maintains either an ownership
interest in or employment with the day care
center, as her job responsibilities with the
Alabama Department of Human Resources
would include inspecting and monitoring
licensed day care centers for compliance
with *Minimum Standards* and, in addition,
would give her access to confidential
information regarding competitors in the
child day care center industry.

Dear Ms. Reid:

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

Is there a conflict of interest for a licensee/owner/director of an Alabama Department of Human Resources' licensed day care center to be hired as a Child Development Consultant to license, inspect, and monitor other licensed day care center providers?

FACTS AND ANALYSIS

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

Terrie Reid is the Interim Director of the Child Day Care Partnership for the Alabama Department of Human Resources (DHR). DHR is considering hiring a licensed child day care center provider as a Child Development Consultant within the Office of Child Care Licensing, Child Day Care Partnership. This provider is the licensee/owner/director of a day care center licensed and regulated by DHR's Office of Child Care Licensing. This child day care center is a sole proprietorship, and the individual interested in the position with DHR is the licensee.

If hired, this individual would like to continue to operate a DHR licensed day care facility, unless advised that there is a conflict of interest. This individual would not license day care centers in the county in which her center is located, nor in which she resides. As a consultant, the individual being considered for the position would participate in inter-agency meetings and could be privy to information about competitors and available federal resources in ways not available to the general public.

The responsibilities of a Child Development Consultant include, but are not limited to, providing consultation to licensed day care center providers, inspecting licensed day care centers for compliance with *Minimum Standards for Day Care Centers and Nighttime Centers*, monitoring licensed day care centers for compliance with *Minimum Standards*, attending group meetings where issues concerning other licensed day care center providers would be discussed, participating in adverse decisions regarding other licensed day care providers and attending meetings where upcoming opportunities for licensed day care center providers would be discussed. DHR is currently in the process of discussing a new program that will award grants to licensed day care center providers.

The Alabama Ethics law, 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.”

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(11) defines a family member of the public employee as:

“(11) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the public employee.”

Section 36-25-9 states:

“(a) Unless expressly provided otherwise by law, no person shall serve as a member or employee of a state, county, or municipal regulatory board or commission or other body that regulates any business with which he is associated. Nothing herein shall prohibit real estate brokers, agents, developers, appraisers, mortgage bankers, or other persons in the real estate field, or other state-licensed professionals, from serving on any planning boards or commissions, housing authorities, zoning board, board of adjustment, code enforcement board, industrial board, utilities board, state board, or commission.”

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 36-25-1(2) defines a business which with the person is associated as:

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business."

Section 36-25-8 states:

"No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business."

The Alabama Ethics law strictly prohibits an individual from being employed by a public entity which regulates any business with which he or she is associated. There is an inherent conflict of interest for an individual, who owns and operates an entity that is licensed by DHR to be hired by DHR in a position whereby she, in effect, would be regulating the industry in which she is employed.

In addition, she would have access to confidential information pertaining to, not only the industry in general, but to information concerning her competitors.

Based on the facts as provided and the above law, the Alabama Department of Human Resources may not hire a licensed child day care center provider as a Child Development Consultant while the individual or a member of her family maintains either an ownership interest in or employment with the day care center, as her job responsibilities with the Alabama Department of Human Resources would include inspecting and monitoring licensed day care centers for compliance with *Minimum Standards* and, in addition, would give her access to confidential information regarding competitors in the child day care center industry.

CONCLUSION

The Alabama Department of Human Resources may not hire a licensed child day care center provider as a Child Development Consultant while the individual or a member of her family maintains either an ownership interest in or employment with the day care center, as her job responsibilities with the Alabama Department of Human Resources would include inspecting and monitoring licensed day care centers for compliance with *Minimum Standards* and, in addition, would give her access to confidential information regarding competitors in the child day care center industry.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on October 3, 2001.



Lewis G. Odom, Jr., Esq.
Chair
Alabama Ethics Commission