

**COMMISSIONERS**

Lewis G. Odom, Jr., Esq., Chairman
Russell Jackson Drake, Esq., Vice-Chairman
J. Harold Sorrells
Raymond L. Bell, Jr., Esq.
John H. Watson

STATE OF ALABAMA ETHICS COMMISSION

MAILING ADDRESS

P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS

RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104



James L. Sumner, Jr.
Director

TELEPHONE (334) 242-2997
FAX (334) 242-0248
WEB SITE www.ethics.alalinc.net

October 3, 2001

ADVISORY OPINION NO. 2001-48

Mr. Donald L. Parker
Executive Director
State of Alabama Board of Pardons and Paroles
Lurleen B. Wallace Building
500 Monroe Street
P.O. Box 302405
Montgomery, Alabama 36130-2405

Conflict Of Interest/Probation And Parole
Officer Accepting Paid Part-Time
Employment As Counselor In Sex Offender
Program.

A Probation and Parole Officer may not
accept a paid part-time position as a
counselor in a sex offender program, when
the program is affiliated with the Circuit
Court and the Board of Pardons and Paroles.

Dear Mr. Parker:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion,
and this opinion is issued pursuant to that request.

QUESTION PRESENTED

May a Probation and Parole Officer accept a paid part-time position as a counselor in a
sex offender program, when the program is affiliated with the Circuit Court and the Board of
Pardons and Paroles?

FACTS AND ANALYSIS

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

Relatively few firms provide community-based mental health counseling for sex offenders. Individuals in need of such treatment may seek treatment voluntarily or by order of a court or the Board of Pardons and Paroles. Qualified counselors are also relatively scarce. Probation and Parole Officers are employed by the Board of Pardons and Paroles to investigate offenders, recommend supervision strategies (which may include referral to appropriate counseling programs), and supervise offenders for the Board and the courts.

Because of the relative scarcity of qualified counselors, a Probation and Parole Officer has been working during his off-duty hours as an unpaid counselor in a sex offender program for approximately 10 years. Because of this critical need, that program is expanding. The Probation and Parole Officer has been offered a paid part-time position as a counselor. The counseling firm plans to conduct programs in two cities, one located in the Probation and Parole Officer's assigned judicial circuit and the other located outside of the circuit. Some offenders in the Probation and Parole Officer's caseload may participate in the program in one city or the other.

In addition to the main question set out above, the Board of Pardons and Paroles has asked several sub-questions:

- 1) So long as the Board of Pardons and Paroles and the appropriate courts are appropriately informed of the relationship between the Probation and Parole Officer and the counseling firm, may the Probation and Parole Officer accept compensation for such off-duty employment? If so, what specific information must the Probation and Parole Officer disclose to the Board of Pardons and Paroles and the courts?
- 2) Assuming that such an arrangement is acceptable to the Board of Pardons and Paroles and the courts, would it make a difference if the Probation and Parole Officer's investigative reports are submitted without a recommendation, in those cases when referral to this program is a viable option?
- 3) Also assuming that such an arrangement is acceptable to the Board of Pardons and Paroles and the courts, would it make a difference if a counseling firm assigns the offenders in the Probation and Parole Officer's state caseload to another counselor?

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 36-25-5(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 36-25-8 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."

A conflict of interest exists for a Probation and Parole Officer to be employed in a part-time compensated position as a counselor in a program that is affiliated with the courts to whom he answers and the Board of Pardons and Paroles, which employs him. The Probation and Parole Officer is in a position to recommend individuals under his supervision for the program, and may also be called upon to counsel individuals in his part-time capacity, who he otherwise supervises in his position with the State of Alabama.

The sub-questions asked by the Board of Pardons and Paroles can all be answered in the negative. Disclosing the relationship to the courts and the Board of Pardons and Paroles does not negate the conflict of interest, nor does reassigning his job responsibilities and case assignments, so as to not conflict with his outside employment. His responsibilities to the State of Alabama come first.

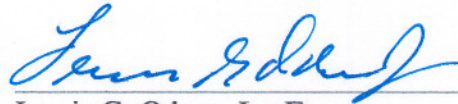
Based on the facts as provided and the above law, a Probation and Parole Officer may not accept a paid part-time position as a counselor in a sex offender program, when the program is affiliated with the Circuit Court and the Board of Pardons and Paroles.

CONCLUSION

A Probation and Parole Officer may not accept a paid part-time position as a counselor in a sex offender program, when the program is affiliated with the Circuit Court and the Board of Pardons and Paroles.

AUTHORITY

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

A handwritten signature in blue ink, appearing to read "Lewis G. Odom, Jr.", is written over a horizontal line.

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