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February 6, 2002

ADVISORY OPINION NO. 2002-05

The Honorable Bill Fuller
Commissioner
Alabama Department of Human Resources
S. Gordon Persons Building
50 Ripley Street
P.O. Box 304000
Montgomery, Alabama 36130-4000

Conflict Of Interest/Registered Lobbyist
Serving As Member Of State Board Of
Human Resources.

It is not a conflict of interest for a registered lobbyist to serve as a member of the State Board of Human Resources, as all of the individual's lobbying activities involve the State Legislature, and there is no lobbying done before the Department of Human Resources.

For an interpretation of Article IV, Section 101 of the Alabama Constitution of 1901, the requestor is advised to contact the Office of the Attorney General.

Dear Commissioner Fuller:

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 an individual, who is registered with the Alabama Ethics Commission as a lobbyist, pursuant to the Alabama Ethics Act, and whose regular employment involves lobbying the Legislature, serve on the State Board of Human Resources?

FACTS AND ANALYSIS

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

Bill Fuller is the Commissioner for the State of Alabama Department of Human Resources. A registered lobbyist, Leslie Sanders, has been appointed by Governor Don Siegelman to the State Board of Human Resources. Ms. Sanders is a registered lobbyist for Alabama Power Company. This organization does not receive funding from the Alabama Department of Human Resources.

The Alabama Ethics Law, Code of Alabama, 1975, 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 36-26-17 defines lobbying as:

"(17) LOBBYING. The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body; provided, however, that providing public testimony before a legislative body or regulatory body or any committee thereof shall not be deemed lobbying."

Section 36-25-1(18) defines a lobbyist as:

“(18) LOBBYIST.

a. The term lobbyist includes any of the following:

1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.
2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.
3. A person who expends in excess of one hundred dollars (\$100) for a thing of value, not including funds expended for travel, subsistence expenses, and literature, buttons, stickers, publications, or other acts of free speech, during a calendar year to lobby.
4. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.
5. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.”

The Alabama Department of Human Resources’ mission, as set forth in its mission statement, is to protect those individuals in the State of Alabama who, by reason of age, disability, or dependency, are unable to protect themselves from abuse, neglect, or exploitation. The State Board of Human Resources, in conjunction with the Commissioner, determines policies, rules, and regulations which govern the Department.

There is nothing in the Ethics Law which prohibits a lobbyist from serving as a member of a public board or other body; provided, that the individual’s lobbying activities do not extend to lobbying the board or commission on which he or she serves.

Based on the above law and the facts as provided, it is not a conflict of interest for a registered lobbyist to serve as a member of the State Board of Human Resources, as all of the individual’s lobbying activities involve the State Legislature, and there is no lobbying done before the Department of Human Resources.

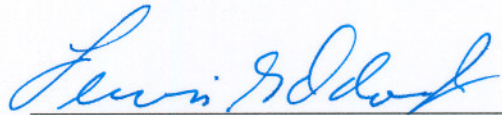
CONCLUSION

It is not a conflict of interest for a registered lobbyist to serve as a member of the State Board of Human Resources, as all of the individual's lobbying activities involve the State Legislature, and there is no lobbying done before the Department of Human Resources.

For an interpretation of Article IV, Section 101 of the Alabama Constitution of 1901, the requestor is advised to contact the Office of the Attorney General.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on February 6, 2002.



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