



STATE OF ALABAMA ETHICS COMMISSION

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March 6, 2002

ADVISORY OPINION NO. 2002-06

The Honorable Chris Pringle
Member
Alabama House of Representatives
District No. 101
Alabama State House
Montgomery, Alabama 36130

Conflict Of Interest/Member Of Alabama
Legislature Employed With A Public Entity
Under The Audit Authority Of The
Examiners Of Public Accounts Serving On
The Public Examiners Oversight
Committee.

It is a conflict of interest for a member of the
Alabama Legislature, who is employed by a
public institution subject to the audit
authority of the Examiners of Public
Accounts, to serve on the Public Examiners
Oversight Committee, as he or she is in a
position to influence matters which directly
affect his or her employment.

Dear Representative Pringle:

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 a member of the Alabama Legislature, who is employed by a public entity subject to
the audit authority of the Examiners of Public Accounts, serve on the Examiners Oversight
Committee?

FACTS AND ANALYSIS

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

The Department of Examiners of Public Accounts is a public entity charged with, among other things, the authority to examine and audit the books, accounts, and records of all state and county offices, officers, bureaus, boards, commissions, corporations, departments, and agencies. The Department of Examiners of Public Accounts is overseen by the Chief Examiner of Public Accounts. The Chief Examiner reports to and is hired by the Legislative Committee on Public Accounts.

The Legislative Committee on Public Accounts is a 12-member body, which exercises general supervision and control over the actions of the Chief Examiner and the Department of Examiners of Public Accounts. Five members of the Legislative Committee are elected from the membership of the Alabama House of Representatives, and five members are elected from the membership of the Alabama Senate.

As a member of the Alabama House of Representatives, Representative Pringle is involved in the selection process of the membership to the Oversight Committee and currently serves on that Committee.

Representative Pringle asks whether or not there is a conflict of interest for members of the Alabama Legislature, who are employed with a public entity under the audit authority of the Examiners, to serve as a member of the Legislative Oversight Committee.

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 36-25-5(b) states:

"(b) Unless prohibited by the Constitution of Alabama of 1901, nothing herein shall be construed to prohibit a public official from introducing bills, ordinances,

resolutions, or other legislative matters, serving on committees, or making statements or taking action in the exercise of his or her duties as a public official. A member of a legislative body may not vote for any legislation in which he or she knows or should have known that he or she has a conflict of interest.”

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 36-25-1(2) defines a business with which 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 36-25-9(a) 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."

An inherent conflict of interest exists for a public official or a public employee, who is employed by a public entity subject to certain regulatory authority, to serve on the board or commission overseeing the regulator.

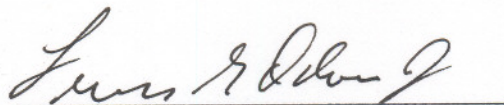
In the facts before the Commission, a conflict of interest exists for a public official, who is employed with a public entity subject to the audit authority of the Examiners of Public Accounts, to serve on the Legislative Committee overseeing the Examiners of Public Accounts, as he or she would be in a position to influence matters which directly affect his or her employment.

CONCLUSION

It is a conflict of interest for a member of the Alabama Legislature, who is employed by a public institution subject to the audit authority of the Examiners of Public Accounts, to serve on the Public Examiners Oversight Committee, as he or she is in a position to influence matters which directly affect his or her employment.

AUTHORITY

By 4-1 vote of the Alabama Ethics Commission on March 6, 2002.

A handwritten signature in cursive script, reading "Lewis G. Odom, Jr.", written over a horizontal line.

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