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May 1, 2002

ADVISORY OPINION NO. 2002-18

Mr. Philip Tyler
Deputy Commissioner for Field Administration
Alabama Department of Human Resources
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Revolving Door/Deputy Commissioner For
Field Administration With State Of
Alabama Department Of Human Resources,
Who Is Also An Attorney, Retiring And
Continuing To Assist In Litigation On
Behalf Of The State Department Of Human
Resources.

The Deputy Commissioner for Field
Administration with the State of Alabama
Department of Human Resources, who is
also a licensed attorney, may, upon his
retirement and entering into the private
practice of law, continue to assist and
represent the State Department of Human
Resources in litigation in which he was
involved prior to his retirement.

Dear Mr. Tyler:

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 the Deputy Commissioner for Field Administration with the State of Alabama Department of Human Resources, upon his retirement, act as an attorney for the State by continuing to assist in handling litigation in which he was involved prior to his retirement?

FACTS AND ANALYSIS

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

Philip Tyler is the Deputy Commissioner for Field Administration with the State of Alabama Department of Human Resources (DHR). Mr. Tyler is in charge of the following areas: Food Stamps, Civil Rights/Equal Employment, Criminal History Checks, and Quality Control. He is also an attorney, licensed to practice law in the State of Alabama, and also serves as Special Counsel to DHR handling child welfare cases.

In addition to serving as Special Counsel, Mr. Tyler has been assigned to work on Arrington v. Fuller, a class-action suit filed by recipients of child support payments against the Department of Human Resources. He is involved with the pretrial defense preparation in the case including discovery, legal research, and trial preparation.

Mr. Tyler will be retiring from state service on May 1, 2002, and will enter the private practice of law on May 6, 2002, with a law firm in Alabama.

The Department of Human Resources has requested that Mr. Tyler continue to be involved in this litigation once he enters private practice. Based on the "Revolving Door" provisions of the Ethics Law, Mr. Tyler asks for this opinion.

The Alabama Ethics Law, Code of Alabama, 1975, 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(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 36-25-13(e) states:

"(e) No former public official or public employee of the state may, within two years after termination of office or employment, act as attorney for any person other than himself or herself or the state, or aid, counsel, advise, consult or assist in representing any other person, in connection with any judicial proceeding or other matter in which the state is a party or has a direct and substantial interest and in which the former public official or public employee participated personally and substantially as a public official or employee or which was within or under the public official or public employee's official responsibility as an official or employee. This prohibition shall extend to all judicial proceedings or other matters in which the state is a party or has a direct and substantial interest, whether arising during or subsequent to the public official or public employee's term of office or employment."

As a general rule, the "Revolving Door" provisions of the Ethics Law prohibit public officials and public employees from accepting employment with a private business with which they were personally and directly involved in the regulation, audit, or investigation of that private business. The "Revolving Door" provisions also prohibit public officials and public employees from interacting with their former employer on behalf of their new employer for a period of two years after leaving public service.

Section 36-25-13(e) contemplates attorneys employed by the State of Alabama, leaving public service and entering the private practice of law. This section states that, for two years after leaving public service, these individuals may not **act as attorney for any person other than himself or herself or the state.**

The section goes on to prohibit individuals from being involved in any type of judicial proceeding in a matter in which the state is a party or has a direct and substantial interest **and** in which they were personally and substantially involved during the course of their public

employment. This section contemplates that the attorney's position will be one that is adverse to the interest of the State.

In the facts before the Commission, the Department of Human Resources is interested in associating Mr. Tyler to protect and assert the State's interest. Clearly, this is contemplated by Section 36-25-13(e), when it allows the individual to act as attorney for the State of Alabama.

In addition, from a practical matter, it is more efficient and less costly for the State of Alabama to have an attorney who is familiar with the litigation to continue to represent the State after his or her retirement, than it is to retain new counsel who would have to familiarize himself/herself with the litigation and basically start over.

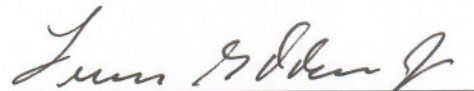
Based on the facts as provided and the above law, the Deputy Commissioner for Field Administration with the State of Alabama Department of Human Resources, who is also a licensed attorney, may, upon his retirement and entering into the private practice of law, continue to assist and represent the State Department of Human Resources in litigation in which he was involved prior to his retirement.

CONCLUSION

The Deputy Commissioner for Field Administration with the State of Alabama Department of Human Resources, who is also a licensed attorney, may, upon his retirement and entering into the private practice of law, continue to assist and represent the State Department of Human Resources in litigation in which he was involved prior to his retirement.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on May 1, 2002.



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