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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

June 5, 2002

ADVISORY OPINION NO. 2002-26

Ms. Leovetta E. Childrey
Accounts Examiner
Alabama Department of Examiners of Public Accounts
7300 Senderson Court
Montgomery, Alabama 36117

Conflict Of Interests/Accounts Examiner
With The Alabama Department Of
Examiners Of Public Accounts Accepting
Part-Time Employment Preparing Financial
Statements For Private Business To Be
Licensed By A State Licensing Board.

An Accounts Examiner with the Alabama
Department of Examiners of Public
Accounts may, on her own time, prepare
financial statements for a private business
which will be used by the business in
obtaining a business license from a State
licensing board; provided, that no public
equipment, facilities, time, materials, human
labor, or other public property under her
discretion or control be used to assist her in
performing her private business interests or
in obtaining new business.

An Accounts Examiner with the Alabama
Department of Examiners of Public
Accounts may not prepare financial
statements for a private business to be used

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to assist that business in obtaining a business license from a State licensing board, when that Accounts Examiner is responsible for auditing that State licensing agency.

As there are federal regulations regarding the impartiality of the Examiners of Public Accounts that go into effect in the Fall of 2002, the requestor of this opinion is advised to determine the applicability of those federal regulations.

Dear Ms. Childrey:

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 Accounts Examiner with the Alabama Department of Examiners of Public Accounts prepare financial statements on her own time for a private business, when those financial statements will be used by the private business in obtaining a business license from a State licensing board?

FACTS AND ANALYSIS

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

Leovetta E. Childrey is an Accounts Examiner with the Alabama Department of Examiners of Public Accounts. The Department is the independent audit agency of the State of Alabama. The Department is responsible for auditing the records of every state and county department, board, bureau, and agency. The Department has a policy that audit personnel be free from personal and external impairments to independence and maintain an independent mental attitude and appearance of independence at all times. All audit personnel submit independent statements relative to each audit engagement prior to the beginning of fieldwork on a specific audit. Independence is considered when assigning staff to audits.

Ms. Childrey is a Certified Public Accountant (CPA). She has been asked if she would prepare (compile, audit or review) financial statements on her own time for a private business. The financial statements will be used in obtaining a business license from a State licensing board.

The business involved is a general contractor and the State licensing board is the Alabama Licensing Board for General Contractors. Ms. Childrey has not audited this board. She states that if she performed the work in question here, she would sign and submit an independence impairment statement to the Examiners of Public Accounts. Independence is considered when assigning staff to audits. It is Ms. Childrey's understanding that she will not be called upon to audit this board after signing and submitting an independence impairment statement.

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 36-25-5(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 36-25-2(b) states in pertinent part:

"An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the

opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.”

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(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.”

The Ethics Law specifically states that public officials and public employees not be denied the same opportunities as other individuals, provided a conflict of interest does not exist.

While the Alabama Department of Examiners of Public Accounts is responsible for auditing the records of every state and county department, it does have a policy which allows employees to have outside business interests, as long as those interests are disclosed. An independence impairment statement (see attached) is submitted each time an examiner is assigned an audit.

There are also federal regulations regarding the impartiality of the Examiners of Public Accounts, which will soon go into effect.

Based on the facts as provided and the above law, an Accounts Examiner with the Alabama Department of Examiners of Public Accounts may, on her own time, prepare financial statements for a private business which will be used by the business in obtaining a business

license from a State licensing board; provided, that no public equipment, facilities, time, materials, human labor, or other public property under her discretion or control be used to assist her in performing her private business interests or in obtaining new business.

However, an Accounts Examiner with the Alabama Department of Examiners of Public Accounts may not prepare financial statements for a private business to be used to assist that business in obtaining a business license from a State licensing board, when that Accounts Examiner is responsible for auditing that State licensing agency.

Further, as there are federal regulations regarding the impartiality of the Examiners of Public Accounts that go into effect in the Fall of 2002, the requestor of this opinion is advised to determine the applicability of those federal regulations.

CONCLUSION

An Accounts Examiner with the Alabama Department of Examiners of Public Accounts may, on her own time, prepare financial statements for a private business which will be used by the business in obtaining a business license from a State licensing board; provided, that no public equipment, facilities, time, materials, human labor, or other public property under her discretion or control be used to assist her in performing her private business interests or in obtaining new business.

An Accounts Examiner with the Alabama Department of Examiners of Public Accounts may not prepare financial statements for a private business to be used to assist that business in obtaining a business license from a State licensing board, when that Accounts Examiner is responsible for auditing that State licensing agency.

As there are federal regulations regarding the impartiality of the Examiners of Public Accounts that go into effect in the Fall of 2002, the requestor of this opinion is advised to determine the applicability of those federal regulations.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on June 5, 2002.



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