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December 4, 2002

ADVISORY OPINION NO. 2002-49

Ms. Jayna M. Farrar
Tax Agent
Jefferson County Tax Collector's Office
1512 Roseland Drive
Birmingham, Alabama 35209

Conflict Of Interest/Tax Agent With The Jefferson County Tax Collector's Office Selling Financial Products To Individuals Including Other Employees Of Jefferson County.

A Tax Agent with the Jefferson County Tax Collector's office may sell financial products as an independent representative of Primerica Financial Services; provided, that all work done in conjunction with her secondary employment is done on her own time, whether after-hours, weekends, annual leave, etc.; and that there is no use of County equipment, facilities, time, materials, human labor or other County property under her discretion or control to assist her in conducting her secondary employment or in obtaining business opportunities.

A Tax Agent with the Jefferson County Tax Collector's office may sell financial products to employees of Jefferson County; provided, that she does not attempt to sell products to County employees on County property during County work hours; and that she does not solicit her subordinates to purchase financial products, nor does she solicit business from individuals or companies with whom she deals in her capacity as a Tax Agent with the Jefferson County Tax Collector's office.

Dear Ms. Farrar:

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 Tax Agent with the Jefferson County Tax Collector's office sell financial products as an independent representative of Primerica Financial Services to other employees of Jefferson County and/or to other individuals who are not employed by Jefferson County?

FACTS AND ANALYSIS

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

Jayna M. Farrar is a Tax Agent with the Jefferson County Tax Collector's office. Her job responsibilities include collecting delinquent personal and real property taxes, initiating legal action when necessary to collect revenues, and meeting with delinquent taxpayers, attorneys, etc. She also processes complaints, maintains appropriate tax records, and determines tax liabilities, etc.

Primerica Financial Services is a member of Citigroup. The financial services offered include mortgage loans, life insurance and investment products. Additional products may be added as the company grows. Ms. Farrar would hold all licenses required to offer these products, and her compensation would be by commission and bonuses.

Ms. Farrar has no preexisting business relationship with Primerica Financial Services, nor does Primerica Financial Services have any business relationship with Jefferson County.

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 36-25-5(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 36-25-5(e) states:

"(e) No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity."

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

"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."

The Ethics Law allows public officials and public employees to have outside interests; provided, that there is no conflict of interests between their primary employment in the public sector and their secondary employment. The law also prohibits public officials and public employees from using their public position or the resources of that public position to assist them in either conducting their outside employment or in obtaining business opportunities.

It would not be a conflict of interest for Ms. Farrar to sell financial products to individuals who are not employed by Jefferson County. While she may sell financial products to employees of Jefferson County, it must be totally done away from County property, without the use of any County resources or time, and she may not, under any circumstances, solicit her subordinates to purchase financial products from her. In addition, Ms. Farrar may not solicit from or attempt to do business with individuals or companies with whom she has dealings as a Tax Agent with the Jefferson County Tax Collector's office.

Based on the facts as provided and the above law, a Tax Agent with the Jefferson County Tax Collector's office may sell financial products as an independent representative of Primerica Financial Services; provided, that all work done in conjunction with her secondary employment is done on her own time, whether after-hours, weekends, annual leave, etc.; and that there is no use of County equipment, facilities, time, materials, human labor or other County property under her discretion or control to assist her in conducting her secondary employment or in obtaining business opportunities.

Further, a Tax Agent with the Jefferson County Tax Collector's office may sell financial products to employees of Jefferson County; provided, that she does not attempt to sell products to County employees on County property during County work hours; and that she does not solicit her subordinates to purchase financial products, nor does she solicit business from individuals or companies with whom she deals in her capacity as a Tax Agent with the Jefferson County Tax Collector's office.

CONCLUSION

A Tax Agent with the Jefferson County Tax Collector's office may sell financial products as an independent representative of Primerica Financial Services; provided, that all work done in conjunction with her secondary employment is done on her own time, whether after-hours, weekends, annual leave, etc.; and that there is no use of County equipment, facilities, time, materials, human labor or other County property under her discretion or control to assist her in conducting her secondary employment or in obtaining business opportunities.

A Tax Agent with the Jefferson County Tax Collector's office may sell financial products to employees of Jefferson County; provided, that she does not attempt to sell products to County employees on County property during County work hours; and that she does not solicit her subordinates to purchase financial products, nor does she solicit business from individuals or companies with whom she deals in her capacity as a Tax Agent with the Jefferson County Tax Collector's office.

AUTHORITY

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

Russell Jackson Drake, Esq.
Chair
Alabama Ethics Commission