



# STATE OF ALABAMA ETHICS COMMISSION



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August 4, 2004

**ADVISORY OPINION NO. 2004-14**

Mr. Tim Bailey  
Deputy Sheriff, DeKalb County  
218 Marshall Road  
Rainsville, Alabama 35986

Revolving Door/Retired Deputy Sheriff  
Working On A Part-Time Basis As A Court  
Security Officer

A retired deputy sheriff of the DeKalb  
County Sheriff's Department may work as a  
court security officer at the DeKalb County  
Courthouse on a part-time basis after his  
retirement, as he did not hold a position of  
authority prior to his retirement.

Dear Mr. Bailey:

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 deputy sheriff, upon retirement from the DeKalb County Sheriff's Department, work part-time as a court security officer at the DeKalb County Courthouse?

### FACTS AND ANALYSIS

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

Tim Bailey is a deputy sheriff for DeKalb County, Alabama. He began his service on March 4, 1991, and he retired effective July 1, 2004. He worked as a police officer for the City of Rainsville for approximately 14 years prior to becoming a deputy sheriff.

Based on his hazardous time he purchased, as well as cumulative sick leave, Mr. Bailey now has approximately 32 years of service for retirement purposes in the Retirement Systems of Alabama as a law enforcement officer.

The Sheriff of DeKalb County is required to furnish court security officers to the DeKalb County Courthouse in accordance with the Rules of Court Security promulgated by the Alabama Supreme Court. He states that one of their court security officers recently accepted a position with the DeKalb County Commission as a Revenue Enforcement Officer, thereby creating a vacancy.

The Sheriff of DeKalb County has asked Mr. Bailey to consider working on a part-time basis as a court security officer because he will still be an officer certified by the Alabama Peace Officers Standards and Training Commission (APOST), and he needs a certified officer in this position.

The presiding judge has advised the Sheriff that he wants at least one certified officer on duty as a court security officer at all times. The County's budget can only afford a part-time officer at the current time, and he would be joining three other part-time officers. Mr. Bailey states that only part-time officers are used because all of the current officers have health insurance benefits, etc. provided by their former employers, which saves the County Commission money.

Mr. Bailey states that he has checked with the State Employee Retirement Systems, and they do not have a problem with him working with another governmental agency, as long as he does not exceed their income guidelines, does not work full-time and/or replace a full-time person.

Mr. Bailey states that he recently became aware of the statute known as the "Revolving Door" statute, and his question is, may he work as a court security officer on a part-time basis for DeKalb County without violating the provisions of Section 36-25-13, Code of Alabama, 1975, as amended?

Mr. Bailey states that his duties as a deputy sheriff for the past 13 years have included general law enforcement duties, as well as responsibility for serving civil papers for the various courts in the county. He did not have any responsibilities regarding purchases, negotiations of grants or contracts, etc., and his new position would be providing general security to the DeKalb County Courthouse and its complex.

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 36-25-13(b) states:

"(b) No public employee shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, or department, of which he or she is a former employee for a period of two years after he or she leaves such employment. For the purposes of this subsection, such prohibition shall not include a former employee of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity."

Section 36-25-13(c) states:

"(c) No public official, director, assistant director, department or division chief, purchasing or procurement agent having the authority to make purchases, or any person who participates in the negotiation or approval of contracts, grants, or awards or any person who negotiates or approves contracts, grants, or awards shall enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which the person was a member or employee for a period of two years after he or she leaves the membership or employment of such governmental agency."

Section 36-25-13(d) states:

“(d) No public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business, corporation, partnership, or individual shall within two years of his or her departure from such employment solicit or accept employment with such private business, corporation, partnership, or individual.”

The “Revolving Door” provisions of the Alabama Ethics Law are designed to prevent certain activities on the part of former public officials and former public employees for a period of two years after their separation from public service.

In July of 1998, the Ethics Commission rendered Advisory Opinion No. 98-35, which was designed to discuss and interpret as completely as possible, the various sections of the “Revolving Door” provisions of the Alabama Ethics Law.

As a follow-up to that opinion, and in an effort to further clarify the section, the Commission rendered Advisory Opinion No. 98-44 on November 4, 1998. That opinion held that:

“An individual who, prior to his or her retirement, or otherwise leaving public service, held a position of authority with hiring and firing authority, purchasing or contracting authority, may not, for a period of two years after retiring or otherwise leaving public service, contract back, accept part-time employment or re-employment with the entity from which he or she retired or otherwise separated from public service.”

That opinion went on to discuss “a position of authority.” While not designed to be all-inclusive, the Commission set out the following tests to determine whether or not an individual held a position of authority. Those tests are:

- 1) Was that individual, prior to his or her retirement, or separation from public service, in a position of authority, having purchasing or contracting authority?
- 2) Was that individual, prior to his or her retirement, or separation from public service, a third or fourth tier employee or a line employee, who did not have any authority over purchasing, contracting or any involvement in the hiring process?

Based on those tests, Advisory Opinion No. 98-44 went on to state that:

“An individual who, prior to his or her retirement, or otherwise leaving public service, did not hold a position of authority nor had the authority to make purchases, approve or grant contracts nor was involved in the hiring process, may accept part-time or re-employment with the entity from which he or she retired or otherwise separated from public service.”

In the facts before the Commission, it would appear that Mr. Bailey, as a deputy sheriff, did not hold a position of authority and, therefore, would not be precluded from returning to work on a part-time basis.

Based on the facts as provided and the above law, a retired deputy sheriff from the DeKalb County Sheriff's Department may work as a court security officer at the DeKalb County Courthouse on a part-time basis after his retirement, as he did not hold a position of authority prior to his retirement.

#### CONCLUSION

A retired deputy sheriff from the DeKalb County Sheriff's Department may work as a court security officer at the DeKalb County Courthouse on a part-time basis after his retirement, as he did not hold a position of authority prior to his retirement.

#### AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on August 4, 2004.

  
J. Harold Sorrells  
Chair  
Alabama Ethics Commission