



STATE OF ALABAMA ETHICS COMMISSION



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

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Raymond L. Bell, Jr., Esq., Chairman
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Cameron McDonald Vowell, Ph.D.

TELEPHONE (334) 242-2997
FAX (334) 242-0248
WEB SITE www.ethics.alalinc.net

February 2, 2005

ADVISORY OPINION NO. 2005-05

Mr. Johnny Johnson
Deputy Commissioner
Property and Casualty Division
Alabama Department of Insurance
5007 George Green Drive
Montgomery, Alabama 36109

Revolving Door/Former Deputy
Commissioner Of The Property And
Casualty Division For The Alabama
Department Of Insurance Mediating
Disputes Involving Insurance Issues Upon
His Retirement

The former Deputy Commissioner of the
Property and Casualty Division for the
Alabama Department of Insurance may,
upon his retirement, mediate disputes
involving insurance issues; provided, that the
mediation does not involve his direct dealing
back with the Alabama Department of
Insurance for a period of two years after his
retirement.

Dear Mr. Johnson:

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 former Deputy Commissioner of the Property and Casualty Division for the Alabama Department of Insurance, upon his retirement, handle mediation disputes involving insurance issues?

FACTS AND ANALYSIS

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

Johnny Johnson is currently employed as Deputy Commissioner of the Property and Casualty Division for the Alabama Department of Insurance. He is eligible for retirement on June 9, 2005, and has recently completed the State Bar's mediation course. He is seriously considering mediation upon retirement from State employment.

Mr. Johnson anticipates mediating disputes involving insurance issues. The role of the mediator is to try to resolve disputes as a neutral party. His understanding is that one or both parties will pay for the cost of mediation, and there could be circumstances where an insurance company pays for the cost of the mediation as an incentive to bring the other party to mediation. It may be that attorneys representing the parties pay for the mediation.

Mr. Johnson is requesting an opinion as to under what circumstances he could mediate these disputes without being in violation of the Ethics Law.

The Alabama Ethics Law, Code of Alabama, 1975, 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(8) states:

“(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(a) states:

"(a) No public official shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, department, or legislative body, of which he or she is a former member for a period of two years after he or she leaves such membership. For the purposes of this subsection, such prohibition shall not include a former member 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."

In mediation issues, the mediator is an impartial third party who does not represent either of the two sides. The only prohibition under this scenario would be if Mr. Johnson had to deal directly back with the Alabama Department of Insurance regarding a mediation issue. Short of that, there is no prohibition in his mediating insurance disputes.

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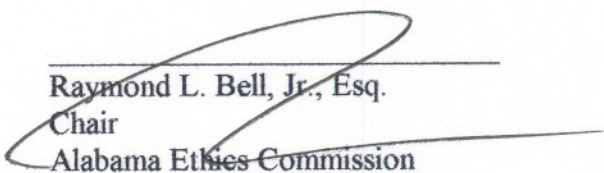
Based on the facts as provided and the above law, the former Deputy Commissioner of the Property and Casualty Division for the Alabama Department of Insurance may, upon his retirement, mediate disputes involving insurance issues; provided, that the mediation does not involve his direct dealing back with the Alabama Department of Insurance for a period of two years after his retirement.

CONCLUSION

The former Deputy Commissioner of the Property and Casualty Division for the Alabama Department of Insurance may, upon his retirement, mediate disputes involving insurance issues; provided, that the mediation does not involve his direct dealing back with the Alabama Department of Insurance for a period of two years after his retirement.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on February 2, 2005.


Raymond L. Bell, Jr., Esq.
Chair
Alabama Ethics Commission