



# STATE OF ALABAMA ETHICS COMMISSION



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## ADVISORY OPINION NO. 2005-13

Mr. Neal Wade  
Director  
Alabama Development Office  
401 Adams Avenue  
Montgomery, Alabama 36130-4106

Revolving Door/Interaction Between Former  
Alabama Development Office (ADO)  
Employee And ADO

A former employee of the Alabama  
Development Office (ADO) may not interact  
or otherwise represent his or her employer in  
any dealings with ADO for a period of two  
years after leaving employment at ADO.

A former employee of the Alabama  
Development Office (ADO) may not, for a  
period of two years after leaving ADO,  
accept employment with a private entity of  
which he or she personally participated in  
the direct regulation, audit or investigation  
of that private business, or otherwise  
participated in any type of contractual  
dealings with that entity.

Thing Of Value/Alabama Development  
Office (ADO) Employee Accepting  
Gift/Hospitality

An Alabama Development Office (ADO)  
employee may accept a seasonal gift of an  
insignificant economic value of less than  
\$100.00 from any source; provided, the  
aggregate value of such gifts from any single

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donor is less than \$250.00 during any one calendar year; and, that the gift does not require any particular course of action on the part of the ADO employee as a condition to the receipt of the gift.

An Alabama Development Office (ADO) employee may accept hospitality in the form of food and beverages where the provider is present, lodging in the continental United States and Alaska incidental to the social occasion, and tickets to social or sporting events if the hospitality does not extend beyond three consecutive days, and is not continuous in nature, and the aggregate value of such hospitality in excess of \$250.00 within a calendar day is reported to the Commission by the provider. However, hospitality may not be accepted by an ADO employee if the receipt of the hospitality requires a particular course of action on the part of the ADO employee.

Dear Mr. Wade:

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**

What forms of official contact by a former employee of the Alabama Development Office on behalf of a new employer are permissible under the "Revolving Door" provisions of the Alabama Ethics Law?

### **FACTS AND ANALYSIS**

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

Neal Wade is the Director of the Alabama Development Office and seeks an Advisory Opinion on behalf of ADO employees, who may in the future decide to leave the employment of ADO. In particular, he is interested in the prohibitions contained in the "Revolving Door" sections of the Alabama Ethics Law.

In the past several years, employees of ADO have left the Department and accepted economic development positions with local communities, state economic development allies or economic development divisions within certain companies. Questions have arisen as to what contact a former employee may have with ADO if that employee is currently serving as an economic developer with the communities, state allies or private businesses.

It is important to bear in mind that the Ethics Commission will only render an Advisory Opinion that is prospective in nature. It cannot render an opinion after-the-fact, i.e., on something that has already occurred.

Based on that, the following questions posed by ADO will be addressed prospectively as relates to present employees of ADO who may desire to enter the private sector.

**Question 1.** May a former employee of ADO participate in ADO-sponsored events?

The ADO serves as the sponsor of certain marketing events. For instance, ADO is sponsoring a pavilion at the upcoming LIGNA trade show in Hanover, Germany. ADO is asking certain communities and private economic development organizations to work the wood working show from the State booth and to also be the financial partner for the event. The State, along with the community and the private economic development organization would make calls on companies at the show and work together as a team with ADO being the lead.

**Question 2.** May a former employee of ADO participate in ADO-generated industrial projects?

An ADO project manager may have a project, and it may be necessary to have one of the private economic development organizations to assist with the company. The assistance may be in the form of providing electrical rates by private utilities, economic development organizations or cost of construction of a facility by a private construction economic development organization. The former employee may work for one of the particular groups that may provide assistance to the project.

**Question 3.** May a former employee of ADO participate in a prospect meeting with a potential new industry?

While there may be no involvement on the part of ADO, the local community may ask that ADO be a part of the project, or the company may seek cash incentives from the State which will require representation by ADO.

**Question 4.** May an ADO employee accept gifts or paid lunches from former ADO employees?

These gifts and lunches may be part of a social gathering or part of an official business meeting.

**Question 5.** May a former ADO employee seek economic development research from ADO?

The former ADO employee may solicit research development in the form of demographics and other studies relating to industrial recruitment and development.

The Alabama Ethics Law, Section 36-25-1(23), Code of Alabama, 1975, 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(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) 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 36-25-1(2) defines a business with which the person is associated as:

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business."

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(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.”

Section 36-25-7(a) states:

“(a) No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive a thing of value for the purpose of influencing official action.”

Section 36-25-7(b) states:

“(b) No public official or public employee shall solicit or receive a thing of value for himself or herself or for a family member of the public employee or family member of the public official for the purpose of influencing official action.”

Section 36-25-7(c) states:

“(c) No person shall offer or give a family member of the public official or family member of the public employee a thing of value for the purpose of influencing official action.”

Section 36-25-1(31)(a) defines a thing of value as:

“(31) THING OF VALUE.

a. Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event offered only to public officials, unsecured loan, other than those loans made in the ordinary course of business, reward, promise of future employment, or honoraria.”

Section 36-25-1(31)(b) defines what the term, thing of value, excludes:

“b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

1. Campaign contribution.
2. Seasonal gifts of an insignificant economic value of less than one hundred dollars (\$100) if the aggregate value of such gifts from any single donor is less than two hundred fifty dollars (\$250) during any one calendar year.
3. Hospitality extended to a public official, public employee, and his or her respective household as a social occasion in the form of food and beverages where the provider is present, lodging in the continental United States and Alaska incidental to the social occasion, and tickets to social or sporting events if the hospitality does not extend beyond three consecutive days and is not continuous in nature and the aggregate value of such hospitality in excess of two hundred fifty dollars (\$250) within a calendar day is reported to the commission by the provider provided that the reporting requirement contained in this section shall not apply where the expenditures are made to or on behalf of an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, and where the public official or public employee does not receive any direct financial benefit. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.
4. Reasonable transportation, food and beverages where the provider is present, and lodging expenses in the continental United States and Alaska which are provided in conjunction with an educational or informational purpose, together

with any hospitality associated therewith; provided, that such hospitality is less than 50 percent of the time spent at such event, and provided further that if the aggregate value of such transportation, lodging, food, beverages, and any hospitality provided to such public employee, public official, and his or her respective household is in excess of two hundred fifty dollars (\$250) within a calendar day the total amount expended shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.

5. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence of a public official or public employee in connection with an economic development research or trade mission, or for attendance at a mission or meeting in which he or she is scheduled to meaningfully participate, or regarding matters related to his or her official duties, and for which attendance no reimbursement is made by the state; provided, that any hospitality in the form of entertainment, recreation, or sporting events shall constitute less than 25% of the time spent in connection with the event. If the aggregate value of any such hospitality extended to the public employee, public official, and his or her respective household is in excess of two hundred fifty dollars (\$250) within a calendar day, the total amount expended for that day shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of such expenditures, the date or dates of the expenditure, and the type of expenditure.”

The “Revolving Door” provisions of the Alabama Ethics Law are designed to prevent public employees and/or public officials from using their official positions to obtain a business opportunity upon their leaving the public sector. If that public employee/official either personally participated in the direct regulation, audit or investigation of a private entity, or was involved in the contractual process between his or her public entity and the private entity, he or she may not, for two years, go to work for that private entity.

Likewise, all public officials/public employees are prohibited for a period of two years after leaving the public sector, from dealing or interacting back with their former public sector employer on behalf of their new employer.

As relates to Questions 1, 2 and 3, while the interests of ADO and the private business in economic development recruitment may be similar, they are not the same. Therefore, a former ADO employee may not use any influence he or she might have with ADO to benefit his or her new employer by representing that employer in dealings with ADO.

As relates to Question No. 4, an ADO employee may accept a seasonal gift of a nominal value, provided that it is less than \$100 in value, and that the aggregate value is less than \$250. It is important to point out that gifts **may not** be accepted or solicited if they are given or offered in exchange for official action.

Likewise, ADO employees may accept hospitality in the form of a social event, as indicated by the above-referenced section of law, again, provided, there is no quid pro quo.

As relates to Question No. 5, while the new employer of the former ADO employee may seek economic development research from ADO, the former employee himself/herself, may not represent his or her employer in dealing with ADO if the interests between the private business and ADO are different. However, the interaction would not be prohibited if the two entities showed an interest, or were working in conjunction with each other.

Based on the facts as provided and the above law, a former employee of the Alabama Development Office (ADO) may not interact or otherwise represent his or her employer in any dealings with ADO for a period of two years after leaving employment at ADO.

Further, a former employee of the Alabama Development Office (ADO) may not, for a period of two years after leaving ADO, accept employment with a private entity of which he or she personally participated in the direct regulation, audit or investigation of that private business, or otherwise participated in any type of contractual dealings with that entity.

Also, an Alabama Development Office (ADO) employee may accept a seasonal gift of an insignificant economic value of less than \$100.00 from any source; provided, the aggregate value of such gifts from any single donor is less than \$250.00 during any one calendar year; and, that the gift does not require any particular course of action on the part of the ADO employee as a condition to the receipt of the gift.

In addition, an Alabama Development Office (ADO) employee may accept hospitality in the form of food and beverages where the provider is present, lodging in the continental United States and Alaska incidental to the social occasion, and tickets to social or sporting events if the hospitality does not extend beyond three consecutive days, and is not continuous in nature, and the aggregate value of such hospitality in excess of \$250.00 within a calendar day is reported to the Commission by the provider. However, hospitality may not be accepted by an ADO employee if the receipt of the hospitality requires a particular course of action on the part of the ADO employee.

### CONCLUSION

A former employee of the Alabama Development Office (ADO) may not interact or otherwise represent his or her employer in any dealings with ADO for a period of two years after leaving employment at ADO.

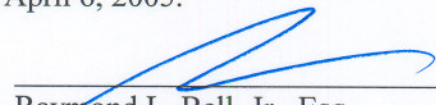
A former employee of the Alabama Development Office (ADO) may not, for a period of two years after leaving ADO, accept employment with a private entity of which he or she personally participated in the direct regulation, audit or investigation of that private business, or otherwise participated in any type of contractual dealings with that entity.

An Alabama Development Office (ADO) employee may accept a seasonal gift of an insignificant economic value of less than \$100.00 from any source; provided, the aggregate value of such gifts from any single donor is less than \$250.00 during any one calendar year; and, that the gift does not require any particular course of action on the part of the ADO employee as a condition to the receipt of the gift.

An Alabama Development Office (ADO) employee may accept hospitality in the form of food and beverages where the provider is present, lodging in the continental United States and Alaska incidental to the social occasion, and tickets to social or sporting events if the hospitality does not extend beyond three consecutive days, and is not continuous in nature, and the aggregate value of such hospitality in excess of \$250.00 within a calendar day is reported to the Commission by the provider. However, hospitality may not be accepted by an ADO employee if the receipt of the hospitality requires a particular course of action on the part of the ADO employee.

### AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on April 6, 2005.

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