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August 3, 2005

ADVISORY OPINION NO. 2005-25

Ms. Charlotte J. Shemwell
Social Service Caseworker
Madison County Department of Human Resources
Nissi Therapeutic Services
6303 Davies Avenue
Huntsville, Alabama 35806

Revolving Door/Former Social Service
Caseworker With Madison County
Department Of Human Resources Providing
Family Support Services Program Through
Her L.L.C. To The Madison County
Department Of Human Resources

A former Social Service Caseworker with the Madison County Department of Human Resources may not, for a period of two years after leaving the Madison County Department of Human Resources, provide family support services back to the Madison County Department of Human Resources through her L.L.C., Nissi Therapeutic Services, as she would be representing herself and/or her new employer before the agency with which she was formerly employed.

A former Social Service Caseworker with the Madison County Department of Human Resources may return to the employment of the Madison County Department of Human Resources on a part-time basis, a contractual basis, etc.; provided, that she did not hold a position of authority prior to her leaving the

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employment of the Madison County
Department of Human Resources.

Dear Ms. Shemwell:

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 former Social Service Caseworker with the Madison County Department of Human Resources provide a "Family Support Services" program to the Madison County Department of Human Resources through her L.L.C., Nissi Therapeutic Services?

FACTS AND ANALYSIS

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

Charlotte J. Shemwell is a former Social Service Caseworker with the Madison County Department of Human Resources. She served in a child protective services capacity assessing current circumstances of the family, and providing an individual plan for each family to create stability in their families. Her last date of service was May 26, 2005.

Ms. Shemwell would like very much to provide a "Family Support Services" program that she developed to the Madison County Department of Human Resources. She is requesting an opinion on this question.

Ms. Shemwell has formed an L.L.C.; Disregarded Entity company, for which she is the sole owner (member), and not an employee. The company's name is Nissi Therapeutic Services (NTS). She will be providing the services personally, but would like to eventually hire employees as the demand for this service is high. Though she would like to offer her services through NTS, she understands that she may not be able to use her formed company to provide the services and, if not, she is willing to provide the services through a personal services contract.

Ms. Shemwell refers to Advisory Opinion No. 2001-36, which held that:

"A former Service Social Worker I/II/Case Manager of the Cullman County Department of Human Resources, who did not hold a position of authority prior to

her leaving the County Department of Human Resources, may enter into a personal services contract with the Cullman County Department of Human Resources to provide social services to clients of the Department.”

“A former Service Social Worker I/II/Case Manager of the Cullman County Department of Human Resources, who forms an L.L.C., may not, for a period of two years after leaving public service, contract with the Cullman County Department of Human Resources to provide services, as she would be representing her employer before the agency with which she was formerly employed.”

On November 4, 1998, the Commission rendered Advisory Opinion No. 98-44, which held 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 Advisory Opinion No. 2001-36, the requestor, Terri Brandy Holmes, was considered an average line employee, with absolutely no authority to hire, fire, make purchases, etc. Upon her resignation, she wanted to provide in-home services on a contract basis with the County Department of Human Resources.

She initially wanted to form an L.L.C., but was told that the L.L.C. would become her employer, and she could not represent her employer back before the County Department of Human Resources for a period of two years.

Ultimately, Ms. Holmes entered into a personal services contract and became a contract employee with the County Department of Human Resources to provide certain services. She, therefore, was once again in an employer/employee relationship.

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 36-25-13(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."

In the facts before the Commission, Ms. Shemwell may not provide services to the Madison County Department of Human Resources through Nissi Therapeutic Services, as she would be representing her employer in dealing with her former employer, in violation of the "Revolving Door" provisions of the Alabama Ethics Law.

If, on the other hand, she did not hold a position of authority while employed by the Madison County Department of Human Resources, she could return on a part-time basis, a contractual basis, etc., to provide certain services to the Madison County Department of Human Resources in a new employer/employee relationship.

Based on the facts as provided and the above law, a former Social Service Caseworker with the Madison County Department of Human Resources may not, for a period of two years after leaving the Madison County Department of Human Resources, provide family support services back to the Madison County Department of Human Resources through her L.L.C., Nissi Therapeutic Services, as she would be representing herself and/or her new employer before the agency with which she was formerly employed.

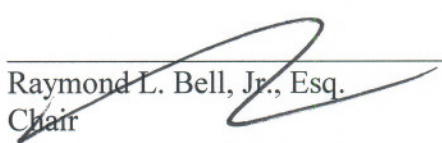
CONCLUSION

A former Social Service Caseworker with the Madison County Department of Human Resources may not, for a period of two years after leaving the Madison County Department of Human Resources, provide family support services back to the Madison County Department of Human Resources through her L.L.C., Nissi Therapeutic Services, as she would be representing herself and/or her new employer before the agency with which she was formerly employed.

A former Social Service Caseworker with the Madison County Department of Human Resources may return to the employment of the Madison County Department of Human Resources on a part-time basis, a contractual basis, etc.; provided, that she did not hold a position of authority prior to her leaving the employment of the Madison County Department of Human Resources.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on August 3, 2005.



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