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ADVISORY OPINION NO. 2005-30

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Revolving Door/Former Deputy
Commissioner For Programs With The State
Department of Human Resources (DHR)
Providing Services To County DHR Offices

The former Deputy Commissioner for
Programs with the State Department of
Human Resources may, upon her retirement,
provide services to county DHR offices in
the areas of counseling, basic living skills,
family support services, etc., as each county
DHR office operates and hires separately
from the State Department of Human
Resources.

For a period of two years after her
retirement, the former Deputy
Commissioner for Programs with the State
Department of Human Resources may not
represent herself, her new employer or
clients in any dealings with the State
Department of Human Resources.

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Dear Mr. Anderson:

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 Deputy Commissioner for Programs with the State Department of Human Resources, upon her retirement, provide services to county DHR offices?

FACTS AND ANALYSIS

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

Belyn J. Richardson currently serves as the Deputy Commissioner for Programs with the State Department of Human Resources (DHR). Ms. Richardson plans on retiring and is seeking guidance about what she can and cannot do after retirement from the State of Alabama for the second time.

Ms. Richardson plans to personally provide services to county DHR offices in the areas of counseling, basic living skills, family support services, etc. These services are paid through local "Flex Funds," are not subject to competitive bid, and are not under contract. Providers of services must register themselves with each county with whom they desire to provide services and must meet certain standards established by Medicaid to be a qualified provider. The Department of Human Resources distributes the "Flex Funds" to the county but does not dictate how they are to be used.

Ms. Richardson is requesting an opinion as to whether she or businesses she is associated with can provide the above-mentioned services to the individual county Departments of Human Resources. Ms. Richardson is not planning on doing any work with any of the State Department of Human Resources agencies or departments.

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(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(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."

While the State Department of Human Resources is the umbrella under which all county DHR offices operate, the county DHR offices operate independently in that they do their own hiring, contracting, etc.

On February 6, 2002, the Commission rendered Advisory Opinion No. 2002-08, which held that:

“A former Deputy Commissioner of the State of Alabama Department of Human Resources may serve as an approved county attorney handling cases concerning dependent children and indigent adults for County Departments of Human Resources.”

That opinion further stated:

“It should be noted that the County Departments of Human Resources operate separately from the State Department of Human Resources.”

Based on the facts as provided and the above law, the former Deputy Commissioner for Programs with the State Department of Human Resources may, upon her retirement, provide services to county DHR offices in the areas of counseling, basic living skills, family support services, etc., as each county DHR office operates and hires separately from the State Department of Human Resources.

For a period of two years after her retirement, the former Deputy Commissioner for Programs with the State Department of Human Resources may not represent herself, her new employer or clients in any dealings with the State Department of Human Resources.

CONCLUSION

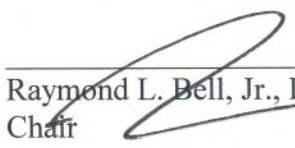
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AUTHORITY

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



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