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October 5, 2005

ADVISORY OPINION NO. 2005-31

Mr. Clifton R. Robertson
Investigator
Alabama Home Builders Licensure Board
3313 Cloverdale Road
Montgomery, Alabama 36106

Conflict Of Interests/Former Real Estate Appraisal Investigator With Alabama Real Estate Appraisers Board Providing Certain Real Estate Services While Employed By Alabama Home Builders Licensure Board

An Investigator with the Alabama Home Builders Licensure Board may accept appraisal assignments, teach appraisal courses and provide investigative services in the area of real estate appraisals; provided, that these activities do not involve any interaction back with the Alabama Real Estate Appraisers Board for a period of two years after leaving his employment with the Alabama Real Estate Appraisers Board.

An Investigator with the Alabama Home Builders Licensure Board may not teach appraisal courses through his own business for a period of two years after leaving his employment with the Alabama Real Estate Appraisers Board, as this would involve his direct interaction back with the Real Estate Appraisers Board in getting his course offerings approved. However, he may teach appraisal courses offered by other entities, when those entities are responsible for obtaining necessary approval from the Real Estate Appraisers Board.

An Investigator with the Alabama Home Builders Licensure Board is not required to surrender his Home Builders license while employed with the Home Builders Licensure Board. However, during the course of his employment, he may not be actively involved in the home building industry, have an interest in a home building business, or otherwise be involved in the industry regulated by his employer.

An Investigator with the Alabama Home Builders Licensure Board, upon his retirement from the Home Builders Licensure Board, may participate in the home building industry; provided, that for a period of two years after leaving the Home Builders Licensure Board, he does not accept employment with a private entity of which he personally participated in the direct regulation, audit or investigation of that private entity while employed by the Alabama Home Builders Licensure Board, nor represent himself, clients or his new employer back before the Alabama Home Builders Licensure Board.

Dear Mr. Robertson:

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.

QUESTIONS PRESENTED

- 1) Can Mr. Robertson accept appraisal assignments, teach appraisal courses and provide investigative services in the area of real estate appraisals during his off-duty time, off days, vacation time and holiday time?
- 2) As an employee of the Alabama Home Builders Licensure Board (Investigator), does the Ethics Commission require that he surrender his Home Builders Licensure while employed in this position?

- 3) At his departure as an employee/Investigator with the Alabama Home Builders Licensure Board, does the Ethics Commission require that he not engage in home construction for a two-year period of time?

FACTS AND ANALYSIS

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

Clifton R. Robertson was employed at the Alabama Real Estate Appraisers Board until June 15, 2005, as a Real Estate Appraisal Investigator. He now works for the Alabama Home Builders Licensure Board as an Investigator, and he has requested an opinion on the above-stated questions.

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 36-25-1(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 36-25-5(a) states:

“(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.”

Section 36-25-5(c) states:

“(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy.”

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(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 Ethics Law prohibit certain activities by public officials and public employees for a period of two years after leaving their public employment. Specifically, a public official or public employee may not, for a period of two years after leaving employment with the public entity, have business dealings back with that public entity on behalf of either himself/herself, his or her new employer or clients, for a period of two years. It does not matter what the former public official’s or public employee’s job responsibilities were while employed with the public entity, nor does it matter what his or her current activities are. It is an across-the-board prohibition that applies to everyone in the public sector equally.

As relates to the teaching of appraisal courses, Mr. Robertson states that on occasion he may be asked by certain entities to teach an appraisal course for them. When an entity wishes to offer an appraisal course, the course contents, as well as the instructor, must be approved by the Real Estate Appraisers Board. This involves interaction between the entity offering the course and the Real Estate Appraisers Board.

Therefore, for a period of two years after leaving the Real Estate Appraisers Board, Mr. Robertson may not, through his own company, offer real estate appraisal courses, as he would have to interact with the Real Estate Appraisers Board to get those courses, as well as himself, approved. However, he would not be prohibited from teaching appraisal courses being offered through other entities.

In addition, if an individual is involved in the direct regulation, audit or investigation of a private entity, he or she may not, for a period of two years, accept employment with a private entity of which he or she personally participated in the direct regulation or audit of that private entity.

While the Ethics Law would not prohibit Mr. Robertson from maintaining his Home Builders License while employed with the Home Builders Licensure Board, he may not be actively involved in the home building industry while employed as an Investigator with the Board, as this would present a conflict of interest, in that he would be regulating himself.

Based on the facts as provided and the above law, an Investigator with the Alabama Home Builders Licensure Board may accept appraisal assignments, teach appraisal courses and provide investigative services in the area of real estate appraisals; provided, that these activities do not involve any interaction back with the Alabama Real Estate Appraisers Board for a period of two years after leaving his employment with the Alabama Real Estate Appraisers Board.

However, an Investigator with the Alabama Home Builders Licensure Board may not teach appraisal courses through his own business for a period of two years after leaving his employment with the Alabama Real Estate Appraisers Board, as this would involve his direct interaction back with the Real Estate Appraisers Board in getting his course offerings approved. However, he may teach appraisal courses offered by other entities, when those entities are responsible for obtaining necessary approval from the Real Estate Appraisers Board.

Additionally, an Investigator with the Alabama Home Builders Licensure Board is not required to surrender his Home Builders license while employed with the Home Builders Licensure Board. However, during the course of his employment, he may not be actively involved in the home building industry, have an interest in a home building business, or otherwise be involved in the industry regulated by his employer.

Also, an Investigator with the Alabama Home Builders Licensure Board, upon his retirement from the Home Builders Licensure Board, may participate in the home building industry; provided, that for a period of two years after leaving the Home Builders Licensure Board, he does not accept employment with a private entity of which he personally participated in the direct regulation, audit or investigation of that private entity while employed by the Alabama Home Builders Licensure Board, nor represent himself, clients or his new employer back before the Alabama Home Builders Licensure Board.

CONCLUSION

An Investigator with the Alabama Home Builders Licensure Board may accept appraisal assignments, teach appraisal courses and provide investigative services in the area of real estate appraisals; provided, that these activities do not involve any interaction back with the Alabama Real Estate Appraisers Board for a period of two years after leaving his employment with the Alabama Real Estate Appraisers Board.

An Investigator with the Alabama Home Builders Licensure Board may not teach appraisal courses through his own business for a period of two years after leaving his employment with the Alabama Real Estate Appraisers Board, as this would involve his direct interaction back with the Real Estate Appraisers Board in getting his course offerings approved.

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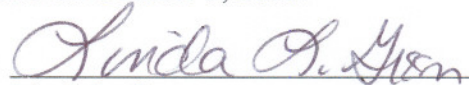
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An Investigator with the Alabama Home Builders Licensure Board is not required to surrender his Home Builders license while employed with the Home Builders Licensure Board. However, during the course of his employment, he may not be actively involved in the home building industry, have an interest in a home building business, or otherwise be involved in the industry regulated by his employer.

An Investigator with the Alabama Home Builders Licensure Board, upon his retirement from the Home Builders Licensure Board, may participate in the home building industry; provided, that for a period of two years after leaving the Home Builders Licensure Board, he does not accept employment with a private entity of which he personally participated in the direct regulation, audit or investigation of that private entity while employed by the Alabama Home Builders Licensure Board, nor represent himself, clients or his new employer back before the Alabama Home Builders Licensure Board.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on October 5, 2005.



Linda L. Green
Chair
Alabama Ethics Commission