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October 5, 2005

ADVISORY OPINION NO. 2005-33

Mr. Stanley W. Landers
Human Services Program Specialist Supervisor
Alabama Child Abuse and Neglect Prevention Board
(Children's Trust Fund)
P.O. Box 4251
Montgomery, Alabama 36103

Revolving Door/Human Services Program
Specialist Supervisor With The State Of
Alabama Child Abuse And Neglect
Prevention Board Of The Children's Trust
Fund Accepting Employment With
Brantwood Children's Home As
Development Director

The Human Services Program Specialist
Supervisor with the State of Alabama Child
Abuse and Neglect Prevention Board of the
Children's Trust Fund may accept
employment with Brantwood Children's
Home, a non-profit organization which
receives funding (competitive grant award)
through the Children's Trust Fund, when he
did not either directly or indirectly have any
dealings with Brantwood Children's Home
prior to his leaving Children's Trust Fund,
nor was he involved either directly or
indirectly regarding the grant awarded
through the Children's Trust Fund.

The Human Services Program Specialist
Supervisor with the State of Alabama Child
Abuse and Neglect Prevention Board of the
Children's Trust Fund may not represent

Mr. Stanley W. Landers
Advisory Opinion No. 2005-33
Page two

Brantwood Children's Home in any dealings with the Children's Trust Fund for a period of two years after leaving Children's Trust Fund.

Dear Mr. Landers:

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 Human Services Program Specialist Supervisor with the State of Alabama Child Abuse and Neglect Prevention Board of the Children's Trust Fund accept employment as Development Director of a non-profit organization (Brantwood Children's Home), when Brantwood Children's Home receives funding through the Children's Trust Fund?

FACTS AND ANALYSIS

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

Stanley W. Landers has been a State employee for nearly eleven years. He is currently employed by the State of Alabama Child Abuse and Neglect Prevention Board (Children's Trust Fund). His current position is Human Services Program Specialist Supervisor.

Mr. Landers has been approached by Brantwood Children's Home, a non-profit organization regarding possible employment as a Development Director. It is his understanding that Advisory Opinion No. 2005-24 was issued regarding this position and another prospective employee. Mr. Landers states that it is his belief that his situation is vastly different, as he has had no involvement in the awarding or allocation of funds to Brantwood Children's Home.

Mr. Landers states that Brantwood Children's Home does receive funding (competitive grant award) through the Children's Trust Fund in the amount of \$35,000. Mr. Landers does not have direct or indirect authority in regard to this grant, its management or its level of funding (the CTF Board of Directors determines funding). Mr. Landers states that based on the fact that he was formerly employed with Brantwood Children's Home, he has removed himself from any dealings with the Home.

Mr. Landers states that he was employed at Brantwood Children's Home approximately 12 years ago as a Behavioral Aid. He was also employed part-time by Brantwood Children's Home more recently (resigned approximately seven months ago). He states that his primary duty was reviewing records for accuracy and submitting information for Medicaid reimbursement. He states that he did receive clearance from the Alabama Ethics Commission before accepting this position.

Upon further inquiry, Mr. Landers has stated that he has had no dealings with Brantwood Children's Home on behalf of the State of Alabama.

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.”

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. 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.

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.

Based on the facts as presented and the above law, it would not violate the Alabama Ethics Law for the Human Services Program Specialist Supervisor with the Children’s Trust Fund to accept employment as Development Director with Brantwood Children’s Home, even though Brantwood Children’s Home is partially funded through the Children’s Trust Fund, when Mr. Landers has had no part in awarding, overseeing or managing the grant, and when he did not personally participate in the direct regulation, audit or investigation of Brantwood Children’s Home on behalf of the Children’s Trust Fund or the State of Alabama.

However, for a period of two years after leaving the Children’s Trust Fund, Mr. Landers may not represent Brantwood Children’s Home in any dealings with the Children’s Trust Fund.

CONCLUSION

The Human Services Program Specialist Supervisor with the State of Alabama Child Abuse and Neglect Prevention Board of the Children's Trust Fund may accept employment with Brantwood Children's Home, a non-profit organization which receives funding (competitive grant award) through the Children's Trust Fund, when he did not either directly or indirectly have any dealings with Brantwood Children's Home prior to his leaving Children's Trust Fund, nor was he involved either directly or indirectly regarding the grant awarded through the Children's Trust Fund.

The Human Services Program Specialist Supervisor with the State of Alabama Child Abuse and Neglect Prevention Board of the Children's Trust Fund may not represent Brantwood Children's Home in any dealings with the Children's Trust Fund for a period of two years after leaving Children's Trust Fund.

AUTHORITY

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



Linda L. Green

Chair

Alabama Ethics Commission