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December 7, 2005

ADVISORY OPINION NO. 2005-36

Ms. Tanisha M. Mays
Accountant
Calhoun County Department of Human Resources
P.O. Box 1869
801 Noble Street
Anniston, Alabama 36202-1869

Conflict Of Interest/Spouse Of Accountant For Calhoun County Department of Human Resources (DHR) entering into a vendor agreement with the County Department of Human Resources

The spouse of the accountant for the Calhoun County Department of Human Resources (DHR), who is a certified addiction counselor may enter into a vendor agreement to provide certain services to the Calhoun County Department of Human Resources; provided, that his wife, the accountant for the Department of Human Resources, plays no part in his obtaining the opportunity; and, that she is not involved in approving or otherwise reviewing invoices submitted by her husband for payment.

A copy of any contract entered into between the Calhoun County Department of Human Resources and the spouse of the department's accountant, must be filed with the Ethics Commission within ten days after its having been entered into, regardless of the amount of the contract or whether or not the contract was obtained through competitive bid.

Dear Ms. Mays:

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 husband of the accountant for the Calhoun County Department of Human Resources, who is a certified addiction counselor, enter into a contractual relationship to provide certain services to the Department of Human Resources?

FACTS AND ANALYSIS

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

Tanisha Mays is the accountant for the Calhoun County Department of Human Resources. Her husband, Frederick Mays, is a Medicaid Rehab Provider. Ms. Mays states that her office administers a number of programs, most notably the Family & Children's Services Program. Their office is responsible for investigating cases of child abuse and neglect and working with children and families in the county, which includes providing services (e.g., counseling, etc). They also provide foster care placements for those children who are no longer able to reside in their own homes due to safety concerns resulting from abuse and neglect. Funds for foster care payments and related counseling services are paid from local funds, or if the placement agency is under a State contract, by State DHR.

Mr. Mays is a certified addiction counselor and holds a Masters of Science degree in Counseling from Jacksonville State University, where he is also employed. He has over 11 years of experience providing therapy to the mentally retarded, mentally ill, and drug addicted individuals. He has worked in the past with many DHR clients while working with the Calhoun-Cleburne Mental Health Center, Family Services Center and with Covenant Services. He is also a certified Parent Project facilitator where he has worked with the LINC program that is administered by the local sheriff's department to assist parents of hard to control or troubled children. Because of the growing need for certified addiction counselors in the area, Mr. Mays was approached about becoming an Individual Medicaid Rehab Provider, so that he could provide individual and/or family counseling services.

Under the vendor agreement that is applied to all Medicaid Rehab Providers, Mr. Mays would provide individual and/or family counseling, as required, to DHR clients. At this time, in her position, Ms. Mays would have direct control over the invoices and payments that are paid to all vendors of Medicaid Rehab Services. However, the social workers will have the complete control of making all referrals and authorizations to Mr. Mays. Referrals are made strictly to the client, social worker and supervisors, and are not a duty that she assumes.

Ms. Mays states that she has no discretion in approving payments. All payments that are made from her office are client and/or case specific. Before services are provided, they are first approved by the social workers and/or supervisors on a purchase order. Then, after the invoices are received, they are forwarded to the supervisors for their approval for payment. The director has the final approval of all payments that are disbursed from their office.

Ms. Mays states that, as invoices are received monthly, they are forwarded to her attention to assure that all of the required information is attached and to ensure that the services billed were previously approved and authorized by the social worker and supervisor. After the supervisor returns the invoices to Ms. Mays, indicating that they approve of payment, she processes the invoices (ensures that the computations are correct, and that the services rendered are in accordance with the services authorized via the purchase order). She then forwards the invoices to their County Welfare Assistant (CWOA), who rechecks her work and computations. The CWOA then forwards the invoices on to the director for review and approval. After the director approves payment of the invoices, the CWOA disburses a check to the provider. She states that the CWOA and herself have similar tasks. In addition, the State Auditor's Office audits them on a continual basis to ensure compliance.

John C. James, the Director of the Calhoun County DHR, in conjunction with this request for an opinion, provided the following information to the Commission. He states that he is currently the Director of the Calhoun County DHR. He states that their office is a fairly large size office, and he has responsibility for over 120 employees spread out through the ten floors of their building. They have several different types of units within their office, all of which provide different sorts of duties within Calhoun County. Mr. James states that Ms. Mays' husband is a certified addiction counselor and has expressed a willingness to help serve the drug addicted parents of foster children in their county in an effort to assist with their rehabilitation.

Mr. James states that this is a service the department desperately needs, as they find themselves in the middle of a tremendous drug epidemic in the county, with only a handful of certified addiction counselors to serve them. He states that Mr. Mays would be providing services directly to clients served by Child Welfare Social Workers in their office. He states that these workers would make all referrals to him, and his interaction with personnel in their office would be limited strictly to these individuals. Mr. James further states that Tanisha Mays is their staff accountant, and that she has no influence over the service referral process, and has little day-to-day interaction with Child Welfare staff. Her presence in this office should in no way have any influence over Child Welfare staff referring to Mr. Mays for assistance.

Mr. James further states that their Social Workers choose providers to serve cases based purely on their credentials and overall track record. As staff accountant, Ms. Mays does process checks for payment to individual providers based on their work provided for the department each month. He states that arrangement can be made to have another department employee track and process Mr. Mays' checks each month if necessary, thereby leaving his wife out of this process.

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(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 36-25-8 states:

"No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business."

Section 36-25-11 states:

"Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into."

The prohibitions contained in the Ethics Law do not serve to prohibit the family member of a public official or public employee from obtaining business opportunities with a public sector entity. The prohibitions prohibit that public official and/or public employee from using his or her position or the influence of his or her position to benefit his or her family member.

In the facts before the Commission, it would not violate the Ethics Law for the spouse of the accountant for the Calhoun County Department of Human Resources to enter into a contractual relationship with the County Department of Human Resources to provide certain services, provided, the accountant has not used her position to obtain the opportunity for her husband, and when she is not responsible for the approval or payment of his invoices.

While it appears that there are sufficient checks and balances in place to protect the public's interest in regard to the reviewing of invoices, it would be best for the Department of Human Resources to make arrangements for someone else within the department (other than a subordinate of Ms. Mays) to process her husband's invoices, as they have represented to the Commission that this would not pose a problem, and it would avoid any perception problems.

In addition, as the contract entered into between Mr. Mays and the Department of Human Resources will be paid out of public monies, a copy of that contract must be filed with the Ethics Commission within ten days of its having been entered into.

Based on the facts as provided and the above law, the spouse of the accountant for the Calhoun County Department of Human Resources, who is a certified addition counselor may enter into a vendor agreement to provide certain services to the Calhoun County Department of Human Resources; provided,

1) that his wife, the accountant for the Department of Human Resources, plays no part in his obtaining the opportunity;

2) that she is not involved in approving or otherwise reviewing invoices submitted by her husband for payment; and,

3) that a copy of any contract entered into between the Calhoun County Department of Human Resources and the spouse of the department's accountant, must be filed with the Ethics Commission within ten days after its having been entered into, regardless of the amount of the contract or whether or not the contract was obtained through competitive bid.

CONCLUSION

The spouse of the accountant for the Calhoun County Department of Human Resources (DHR), who is a certified addiction counselor may enter into a vendor agreement to provide certain services to the Calhoun County Department of Human Resources; provided, that his wife, the accountant for the Department of Human Resources, plays no part in his obtaining the opportunity; and, that she is not involved in approving or otherwise reviewing invoices submitted by her husband for payment.

A copy of any contract entered into between the Calhoun County Department of Human Resources and the spouse of the department's accountant, must be filed with the Ethics Commission within ten days after its having been entered into, regardless of the amount of the contract or whether or not the contract was obtained through competitive bid.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on December 7, 2005.

Linda L. Green
Chair
Alabama Ethics Commission