Mr. Clyde Barganier
Director
Office of Primary Care and Rural Health
Alabama Department of Public Health
1857 Braddock Road
Montgomery, Alabama 36106

Revolving Door/Director Of Office Of Primary Care And Rural Health With Department Of Public Health Working With The Alabama Hospital Association Writing A Grant Proposal For A Federally Funded Medicare Rural Hospital Flexibility Program And Assisting And Disbursing Its Funds On Behalf Of The Association To Rural Hospitals, Upon His Retirement From The Department Of Public Health

The Director of the Office of Primary Care and Rural Health with the Department of Public Health, upon his retirement, may accept employment with the Alabama Hospital Association writing a grant proposal for a federally funded Medicare Rural Hospital Flexibility Program, and may assist in disbursing the funds from the grant on behalf of the Association to rural hospitals; provided, that he did not personally participate in the direct regulation, audit or investigation of the Alabama Hospital Association prior to his retirement from the Department of Public Health.
In addition, for a period of two years after retiring from the Department of Public Health, the Director of the Office of Primary Care and Rural Health may not represent clients, himself or his new employer in any business dealings with the Department of Public Health.

Dear Mr. Barganier:

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 Director of the Office of Primary Care and Rural Health with the Alabama Department of Public Health, upon his retirement, work with the Alabama Hospital Association writing a grant proposal for a federally funded Medicare Rural Hospital Flexibility Program and assist in disbursing these funds on behalf of the Association to rural hospitals?

**FACTS AND ANALYSIS**

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

Clyde Barganier is a state employee who has worked with the Alabama Department of Public Health for over 25 years. He plans on retiring effective March 31, 2006. Currently he serves as the Director of the Office of Primary Care and Rural Health. In that position, he has the responsibility to coordinate activities at the state level to improve access to primary health care to rural and other under-served Alabamians. This includes working with federal officials in collaboratively identifying those Alabama counties which are eligible for designation as health professional shortage areas, providing consultation to rural health providers on grant opportunities, operating a center for recruiting health workers to rural and other under-served communities, and developing educational and research activities which describe the disparities in health status existing in Alabama’s population.

Mr. Barganier states that being mindful of the “Revolving Door” provisions of the Ethics Act, after his retirement, he would like to work with the Alabama Hospital Association in a very limited capacity. He states that his work with the Alabama Hospital Association would not involve any contact with management or staff in the Department of Public Health. Specifically,
his proposed work would involve his writing a grant proposal for a federally funded Medicare Rural Hospital Flexibility Program and assisting in disbursing its funds on behalf of the Association to rural hospitals. He states that this grant has been available to the state for about six years, and guidelines require the joint collaboration of the Department and State Hospital Association in its implementation.

This $440,000 is awarded to the Department of Public Health, but is contracted to the Hospital Association which distributes the funds according to proposals submitted from approximately 40 rural hospitals in the state. The funds are used by these hospitals for staff education, measuring and improving the quality of care, enhancing the emergency medical services in their communities and similar activities to improve the stability of their health care.

Dr. Barganier states that this work in no way would involve him in licensure or regulatory matters as between the Department and the Hospital Association or any of its member hospitals. He states that any discussions between the Hospital Association and the Department regarding the grant would not involve his participation, but that his work directions would come from Hospital Association staff, and day-to-day involvement would be with them and the administrators and other staff from the eligible hospitals.

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.”

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.

In addition, if an individual is involved in the direct regulation, audit or investigation of a private entity, or is involved in any contractual dealings between the public entity and the private entity, he or she may not, for a period of two years, accept employment with that private entity.
Based on the facts as provided and the above law, the former Director of the Office of Primary Care and Rural Health with the Alabama Department of Public Health, upon his retirement, may work with the Alabama Hospital Association writing a grant proposal for a federally funded program, and may assist in disbursing its funds on behalf of the Association, when he was not involved in regulating, auditing or investigating the Association in his position with the Department of Public Health; and further, when this position would not require or involve his interaction back with the Department of Public Health.

CONCLUSION

The Director of the Office of Primary Care and Rural Health with the Department of Public Health, upon his retirement, may accept employment with the Alabama Hospital Association writing a grant proposal for a federally funded Medicare Rural Hospital Flexibility Program, and may assist in disbursing the funds from the grant on behalf of the Association to rural hospitals; provided, that he did not personally participate in the direct regulation, audit or investigation of the Alabama Hospital Association prior to his retirement from the Department of Public Health.

In addition, for a period of two years after retiring from the Department of Public Health, the Director of the Office of Primary Care and Rural Health may not represent clients, himself or his new employer in any business dealings with the Department of Public Health.

AUTHORITY

By 4-0-1 vote of the Alabama Ethics Commission on February 1, 2006.

Linda L. Green
Chair
Alabama Ethics Commission