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April 5, 2006

ADVISORY OPINION NO. 2006-07

Mr. Jackie O. Farmer, Sr.
Retired Enforcement Agent
Alabama Alcoholic Beverage Control Board
Enforcement Division
2130 Taylor Mill Road
Elba, Alabama 36323

Revolving Door/Retired Enforcement Agent
With The Alabama Alcoholic Beverage
Control Board, Enforcement Division,
Contracting With ABC Board Licensees As
An Independent Contractor To Provide
Training Under The Responsible Vendor
Program

A retired Enforcement Agent with the
Alabama Alcoholic Beverage Control
Board, Enforcement Division, may, upon his
retirement, start his own business and
provide consulting services as an
independent contractor to ABC Board
licensees that he had contact with prior to
his retirement from the ABC Board, as it is
employment with private entities that he
regulated, etc. that is prohibited by the
"Revolving Door" provisions of the Ethics
Law, and not the providing of consulting
services as an independent contractor.

A retired Enforcement Agent with the
Alabama Alcoholic Beverage Control
Board, Enforcement Division, may not, for a
period of two years after leaving the ABC
Board, represent these or other clients in any
dealings back with the ABC Board.

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Dear Mr. Farmer:

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 a retired Enforcement Agent with the Alabama Alcoholic Beverage Control Board, Enforcement Division, start his own business and contract with ABC Board licensees that he had contact with as an Enforcement Agent to provide services as an independent contractor?

FACTS AND ANALYSIS

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

Jackie O. Farmer, Sr. is a retired Enforcement Agent with the Alabama Alcoholic Beverage Control Board, Enforcement Division. He retired on September 1, 2005. Mr. Farmer wishes to become a trainer/provider of the ABC Board Responsible Vendor Program.

As such, he would contract with individual licensees to provide training in accordance with the ABC Board's Responsible Vendor Program and to ensure compliance with the program.

Mr. Farmer states that, from January 2000 until his retirement, he was assigned to Coffee and Dale Counties, and as part of his duties, conducted inspections of ABC licensed establishments in those counties to ensure compliance with ABC rules and regulations and state law.

He states that, through his business, he would not represent any licensee before the ABC Board or make any hearing appearances on the behalf of the licensee. He would simply be providing training to licensees that meets the requirements outlined by the ABC Responsible Vendor Program.

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(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(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 Commission has previously addressed this issue on three occasions, specifically, through Advisory Opinion Nos. 2005-07, 2005-18 and 2005-19.

All three of those opinions state that:

"The Ethics Law prohibits a former public official or public employee from accepting employment with a private entity of which he or she has participated in the direct regulation, audit or investigation for a period of two years after leaving the public sector."

“The Ethics Law does not prohibit an individual, who may have had regulatory authority, from providing consulting services to a private entity upon his or her departure from public service, as this does not rise to the level of employment with that entity, but is instead an independent contractor/client relationship.”

Based on the law and the previous precedent set out in these opinions, while Mr. Farmer could not accept employment with ABC licensees whom he regulated or investigated during his time with the ABC Board, he is not prohibited from serving as an independent contractor through his own business and providing consulting services to these licensees. He may not, however, for a period of two years after leaving the ABC Board, represent these clients in any dealings back with the ABC Board.

Based on the facts as provided and the above law, a retired Enforcement Agent with the Alabama Alcoholic Beverage Control Board, Enforcement Division, may, upon his retirement, start his own business and provide consulting services as an independent contractor to ABC Board licensees that he had contact with prior to his retirement from the ABC Board, as it is employment with private entities that he regulated, etc. that is prohibited by the “Revolving Door” provisions of the Ethics Law, and not the providing of consulting services as an independent contractor.

Further, a retired Enforcement Agent with the Alabama Alcoholic Beverage Control Board, Enforcement Division, may not, for a period of two years after leaving the ABC Board, represent these or other clients in any dealings back with the ABC Board.

CONCLUSION

A retired Enforcement Agent with the Alabama Alcoholic Beverage Control Board, Enforcement Division, may, upon his retirement, start his own business and provide consulting services as an independent contractor to ABC Board licensees that he had contact with prior to his retirement from the ABC Board, as it is employment with private entities that he regulated, etc. that is prohibited by the “Revolving Door” provisions of the Ethics Law, and not the providing of consulting services as an independent contractor.

A retired Enforcement Agent with the Alabama Alcoholic Beverage Control Board, Enforcement Division, may not, for a period of two years after leaving the ABC Board, represent these or other clients in any dealings back with the ABC Board.

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AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on April 5, 2006.

A handwritten signature in purple ink, reading "Linda L. Green", is written over a horizontal line.

Linda L. Green
Chair
Alabama Ethics Commission