



# STATE OF ALABAMA ETHICS COMMISSION



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August 2, 2006

## ADVISORY OPINION NO. 2006-12

Mr. George C. Howell, Jr.  
Director of Special Projects  
Alabama Department of Revenue  
8075 Ansley Trace  
Montgomery, Alabama 36117-8218

Revolving Door/Retired Director Of Special Projects With Alabama Department Of Revenue Pursuing Employment And/Or Contract Consultant Work In Economic Development And Other Activities For Private Companies And Local City And County Governments In Alabama

For a period of two years after his retirement, the former Director of Special Projects with the Alabama Department of Revenue may not represent private companies, Alabama local governments, or any other individual or entity before the Alabama Department of Revenue.

The former Director of Special Projects with the Alabama Department of Revenue may represent private companies, Alabama local governments and/or any other individual or entity before any state agency or office, except the Department of Revenue.

The retired Director of Special Projects with the Alabama Department of Revenue may represent private companies before Alabama local governments, including, but not



limited to, city and county governments and their subdivisions.

The retired Director of Special Projects with the Alabama Department of Revenue may contract with the state and/or state agencies, except the Department of Revenue, and may represent those entities before private companies and/or Alabama local governments.

Dear Mr. Howell:

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) “May I represent private companies or Alabama local governments before the Alabama Department of Revenue?”
- 2) “May I represent private companies or Alabama local governments before other state agencies and offices, including the Governor’s Office, the Alabama Legislature, the Alabama Development Office (ADO), the Alabama Department of Economic and Community Affairs (ADECA), the State Industrial Development Authority (SIDA), or any other state office or agency, except the Department of Revenue?”
- 3) “May I represent private companies before Alabama local governments, including city governments, county governments, city and county revenue offices, industrial development boards and authorities, or any other agency of any local government in Alabama?”
- 4) “May I, as a contractor or retired employee working with the state, represent the state and state agencies before private companies and/or Alabama local governments?”

### FACTS AND ANALYSIS

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

George C. Howell, Jr. is currently employed with the Alabama Department of Revenue as Director of Special Projects. He plans to retire on January 1, 2007. While employed with the Department of Revenue, he was involved with tax incentives and economic development from October 1, 1997 until May 1, 2005. After he retires, he wishes to pursue employment and/or contract consultant work in economic development and other activities for private companies and local city and county governments in Alabama.

He has asked the above-referenced questions relative to his future plans.

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 36-25-13(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.”

As relates to question one, for a period of two years after he retires, Mr. Howell may not represent private companies, local governments, or any other individual or entity before the Alabama Department of Revenue. This is a strict prohibition which applies to everyone leaving the public sector equally, with no exceptions.

Therefore, the answer to question one is, no—Mr. Howell may not represent private companies or Alabama local governments before the Alabama Department of Revenue.

As to question two, the “Revolving Door” prohibitions strictly relate to the former employing entity and not other local governments, state agencies, etc. Therefore, there are no prohibitions in Mr. Howell representing private companies or Alabama local governments before other state agencies and offices, including the ones listed in question two, again, with the exception of the Department of Revenue.

As to question three, the answer is the same as that to question two. The only prohibition would relate to Mr. Howell representing clients before the Department of Revenue, not other local governments, including city and county governments as listed in question two.

As to question four, as stated in Section 36-25-13(c), certain individuals may not enter into a contract with the agency from which they retired.

On November 4, 1998, the Commission rendered Advisory Opinion No. 98-44, which held:

“An individual who, prior to his or her retirement, or otherwise leaving public service, held a position of authority with hiring and firing authority, purchasing or contracting authority, may not, for a period of two years after retiring or otherwise



leaving public service, contract back, accept part-time employment or re-employment with the entity from which he or she retired or otherwise separated from public service.”

Because his position, Director of Special Projects, would be considered a position of authority, Mr. Howell may not enter into a contract with the Department of Revenue, for any purpose, for a period of two years after his retirement, nor may he be employed by the Department of Revenue on a temporary or part-time basis. He would not, however, be prohibited from contracting with other state agencies or governmental entities and representing them before private companies and/or Alabama local governments.

The prohibitions contained in Section 36-25-13(d) would prohibit Mr. Howell from accepting employment with any entity with which he was personally involved, either through auditing, investigating or otherwise regulating. This prohibition, however, is limited to employment with that private sector entity and not the providing of consulting services.

Most recently, on June 1, 2005, the Commission rendered Advisory Opinion No. 2005-18, which related to a former employee with the Alabama Department of Transportation (ALDOT) providing consulting services to an entity whose work he reviewed while employed by ALDOT. That opinion held that:

“A former employee of the Alabama Department of Transportation (ALDOT) may form a company to provide consulting services, and may provide consulting services to entities whose work he reviewed while employed at ALDOT, as it is employment with those entities that is prohibited by the “Revolving Door” provisions of the Ethics Law, and not the providing of consulting services as an independent contractor through one’s own company.”

Based on this, Mr. Howell may, through his private business, provide consulting services to entities whose work he may have in some manner regulated.

All the prohibitions applicable to Mr. Howell which are contained in the “Revolving Door” provisions of the Ethics Law apply solely to his dealings with the Department of Revenue. There is no limitation, except as previously noted, that would impact on his dealings or business relationships with any other department, agency, governmental entity, etc., except the Department of Revenue.

Based on the facts as provided and the above law, for a period of two years after his retirement, the former Director of Special Projects with the Alabama Department of Revenue may not represent private companies, Alabama local governments, or any other individual or entity before the Alabama Department of Revenue.



Further, the former Director of Special Projects with the Alabama Department of Revenue may represent private companies, Alabama local governments and/or any other individual or entity before any state agency or office, except the Department of Revenue.

Additionally, the retired Director of Special Projects with the Alabama Department of Revenue may represent private companies before Alabama local governments, including, but not limited to, city and county governments, and their subdivisions.

Finally, the retired Director of Special Projects with the Alabama Department of Revenue may contract with the state and/or state agencies, except the Department of Revenue, and may represent those entities before private companies and/or Alabama local governments.

#### CONCLUSION

For a period of two years after his retirement, the former Director of Special Projects with the Alabama Department of Revenue may not represent private companies, Alabama local governments, or any other individual or entity before the Alabama Department of Revenue.

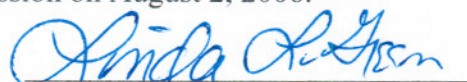
The former Director of Special Projects with the Alabama Department of Revenue may represent private companies, Alabama local governments and/or any other individual or entity before any state agency or office, except the Department of Revenue.

The retired Director of Special Projects with the Alabama Department of Revenue may represent private companies before Alabama local governments, including, but not limited to, city and county governments, and their subdivisions.

The retired Director of Special Projects with the Alabama Department of Revenue may contract with the state and/or state agencies, except the Department of Revenue, and may represent those entities before private companies and/or Alabama local governments.

#### AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on August 2, 2006.

  
Ms. Linda L. Green  
Chair  
Alabama Ethics Commission