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August 2, 2006

ADVISORY OPINION NO. 2006-15

Ms. Melissa M. Kemp
Pediatric Audiologist
Alabama Department of Rehabilitation Services
2354 Freestone Ridge Cove
Hoover, Alabama 35226

Revolving Door/Former Pediatric
Audiologist With The Alabama Department
Of Rehabilitation Services Returning To The
Department On A Temporary Or Part-Time
Basis

A former Pediatric Audiologist with the
Alabama Department of Rehabilitation
Services may return to the department on a
temporary or part-time basis to provide
services, as prior to her leaving the
department, she did not hold a position of
authority.

Dear Ms. Kemp:

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 former Pediatric Audiologist for the Alabama Department of Rehabilitation Services return to the department on a temporary or part-time basis?

FACTS AND ANALYSIS

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

Melissa M. Kemp has recently left her employment with the Children's Rehabilitation Services (CRS), a division of the Alabama Department of Rehabilitation Services.

Ms. Kemp worked as a Pediatric Audiologist for the department for the past five years. Her job responsibilities included evaluating and assessing audiological function, as well as fitting and verifying hearing aid amplification. Her duties and the cases she served were assigned by a district supervisor.

Ms. Kemp states that while working for CRS, she had no authority to hire or fire employees, nor did she have any authority to negotiate contracts or grants, nor play any role in financial or budgetary decision-making.

She would like to request to work with CRS on a temporary or part-time basis, so that she may perform work assigned to her as the need arises. She is concerned about children with hearing loss receiving audiology services until her vacant position can be filled.

The Alabama Ethics Law, 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.”

In 1998, the Commission tried to interpret the various “Revolving Door” provisions of the Ethics Law under as many different scenarios as possible. In looking at the provisions pertaining to an individual’s ability to be hired back by his or her former employer, in either a part-time or temporary basis, the Commission determined that only those individuals who held a position of authority, and were likely to be able to create an opportunity for themselves, should be barred from returning to the employ of that public entity. The Commission further determined that this prohibition should not apply to those individuals that lacked this authority.

On July 1, 1998, the Commission rendered Advisory Opinion No. 98-35, which attempted to do just that.

In November of 1998, the Commission rendered Advisory Opinion No. 98-44, which stated:

“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.”

“An individual who, prior to his or her retirement, or otherwise leaving public service, did not hold a position of authority nor had the authority to make purchases, approve or grant contracts nor was involved in the hiring process, may accept part-time or re-employment with the entity from which he or she retired or otherwise separated from public service.”

From the facts as presented, it would appear that Ms. Kemp did not hold a position of authority while employed with the Children’s Rehabilitation Services Division of the Alabama Department of Rehabilitation Services.

Based on the facts as provided and the above law, a former Pediatric Audiologist with the Alabama Department of Rehabilitation Services may return to the department on a temporary or part-time basis to provide services, as prior to her leaving the department, she did not hold a position of authority.

CONCLUSION

A former Pediatric Audiologist with the Alabama Department of Rehabilitation Services may return to the department on a temporary or part-time basis to provide services, as prior to her leaving the department, she did not hold a position of authority.

AUTHORITY

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



Linda L. Green
Chair
Alabama Ethics Commission