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August 2, 2006

ADVISORY OPINION NO. 2006-16

Mr. Richard P. Hamilton
Petroleum Engineer, Sr.
State Oil and Gas Board of Alabama
P.O. Box 869999
Tuscaloosa, Alabama 35486-6999

Revolving Door/Retired Petroleum Engineer
With The State Oil And Gas Board Of
Alabama Starting A Consulting Business
Upon His Retirement

A retired Petroleum Engineer with the State Oil and Gas Board of Alabama may, upon his retirement, start a consulting business and provide consulting services to various oil and gas businesses, regardless of whether or not he regulated those oil and gas businesses while employed with the State Oil and Gas Board of Alabama, as it is employment with regulated entities that is prohibited and not the providing of consulting services as an independent contractor.

For a period of two years after leaving the State Oil and Gas Board of Alabama, a Petroleum Engineer may not represent clients, including his own business before the State Oil and Gas Board of Alabama.

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Dear Mr. Hamilton:

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 Petroleum Engineer with the State Oil and Gas Board of Alabama, upon his retirement, start his own business as an oil and gas consultant?

FACTS AND ANALYSIS

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

Richard P. Hamilton has been a Petroleum Engineer with the State Oil and Gas Board of Alabama for over 24 years and plans on retiring in December 2006. His current classification is Petroleum Engineer, Sr. He attained this position on or around April 2002. Prior to that, he was a Petroleum Engineer II for approximately 17 years after being a Petroleum Engineer I for approximately three years.

For the last 21 years, he has served under the same supervisor, Mr. David E. Bolin (Oil and Gas Manager II). During these years, at no time has he been in a position to make direct decisions regarding oil and gas matters. In addition, he has never directly supervised any Oil and Gas Board employees.

Mr. Hamilton states that his current plan is to start his own business as an oil and gas consultant upon retirement. While the business is still in the planning stages, what he envisions is to provide guidance, assistance and a service to oil and gas businesses, doing and considering doing business in the State of Alabama. For example, if a business needed data from the Oil and Gas Board, it could contact Mr. Hamilton, and he could go to the Board and obtain the information requested, and send it to the company. If a company that currently does not do business in Alabama was interested in the State, it could contact him, and he could provide the company with knowledge of the regulatory requirements it would need to consider. He also envisions providing information and guidance to oil and gas businesses in regards to meeting the requirements of the Board and the submittal of required forms, paperwork, etc.

Mr. Hamilton states that he does not envision having any interaction with the Board as a representative of an oil and gas business seeking approval from the Board on any matter.

Mr. Hamilton further states that there has been no interaction with potential clients prior to his retirement. He has informed a few companies and friends of his plans to retire, and if approved by the Commission, his desire to start a consulting company. He states that if his business is approved, he would consider his work to be consulting with the businesses and not being employed by them.

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(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.

While Mr. Hamilton states that he would be available to obtain information for potential clients from the Oil and Gas Board, this would not rise to the level of representing a client before the Oil and Gas Board and would not be prohibited by Section 36-25-13(b). This would merely be the obtaining of public information from a public entity and would not be an effort to influence the outcome of a matter pending before the Board.

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.

On June 1, 2005, the Commission rendered Advisory Opinions Nos. 2005-18 and 2005-19. Those opinions 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."

"The former Deputy Commissioner of the Property and Casualty Division of the Alabama Department of Insurance may provide consultation services to insurance companies through his own company, as it is employment with private companies with whom he personally participated in the direct regulation, audit or investigation of those private firms, which is prohibited by the Ethics Law, and not the providing of consulting or other professional services in an independent contractor/client relationship."

Therefore, Mr. Hamilton may provide consulting services to oil and gas companies, regardless of his interaction with them prior to his retirement from the State Oil and Gas Board of Alabama. However, he may not accept employment with those entities of which he personally participated in the direct regulation, audit or investigation of those oil and gas companies.

Based on the facts as provided and the above law, a retired Petroleum Engineer with the State Oil and Gas Board of Alabama may, upon his retirement, start a consulting business and

provide consulting services to various oil and gas businesses, regardless of whether or not he regulated those oil and gas businesses while employed with the State Oil and Gas Board of Alabama, as it is employment with regulated entities that is prohibited and not the providing of consulting services as an independent contractor.

Further, for a period of two years after leaving the State Oil and Gas Board of Alabama, a Petroleum Engineer may not represent clients, including his own business before the State Oil and Gas Board of Alabama.

CONCLUSION

A retired Petroleum Engineer with the State Oil and Gas Board of Alabama may, upon his retirement, start a consulting business and provide consulting services to various oil and gas businesses, regardless of whether or not he regulated those oil and gas businesses while employed with the State Oil and Gas Board of Alabama, as it is employment with regulated entities that is prohibited and not the providing of consulting services as an independent contractor.

For a period of two years after leaving the State Oil and Gas Board of Alabama, a Petroleum Engineer may not represent clients, including his own business before the State Oil and Gas Board of Alabama.

AUTHORITY

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



Linda L. Green

Chair

Alabama Ethics Commission