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December 5, 2007

ADVISORY OPINION NO. 2007-23

Ms. Sherry Bradley
Deputy Director
Bureau of Environmental Services
Alabama Department of Public Health
P. O. Box 30317
Montgomery, Alabama 36130-3017

Revolving Door/Former Employee Of
Department Of Public Health Accepting
Employment With Private Company Under
Contract With The Department Of Public
Health

A retired Environmental Manager for the
Department of Public Health in Madison
County may accept employment with a
private Montgomery-based company upon
his retirement, when that company is under
contract with the Department of Public
Health; when he was not involved in the
contractual process between the company
and the Department of Public Health;
provided, that for a period of two years after
his retirement, the former employee does not
interact on behalf of the company in any
manner, including without limitation of on-
line communication, either in person or on-
line, with the Department of Public Health.

Dear Ms. Bradley:

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 Public Health Environmental Manager, who accepts employment with a private company under contract with the Department of Public Health, work on that contract with the Department of Public Health on behalf of his employer?

FACTS AND ANALYSIS

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

The Alabama Department of Public Health, Bureau of Environmental Services is currently in the process of developing a Statewide Web-based Environmental Data Collection System.

Mr. Larry Hayes, an Area based (Madison County) Public Health Environmental Manager, is scheduled to retire at the end of December 2007. Mr. Hayes' job duties are: Directs and supervises environmental staff activities (restaurant and installation of onsite sewage inspections); coordinates information and consults with environmental staff and the general public concerning rules, laws and policies; reviews and gives feedback concerning reports, forms, manuals, policies and complaints.

After retirement, a private Montgomery-based company will employ Mr. Hayes as a computer consultant. This company was awarded a bid by the Department of Public Health through State Purchasing. Mr. Hayes was not involved in the awarding of that contract.

The Department's Computer System Center (CSC) uses this private company and, as such, will have Mr. Hayes available by request for his knowledge of their current computer system. Ms. Bradley states that Mr. Hayes is the only person who knows the mechanics of their existing computer environmental system that has been converted to the web-based centralized system by new programmers. Ms. Bradley states that Mr. Hayes conducted all work on the existing system from his home at night using his personal computer and can do the same, if and when his services are needed, for this new Data System.

Ms. Bradley asks that since this work, computer programming, is easily done offsite by using Web-cast, remote desktop access or by teleconference via Mr. Hayes' personal computer, is this a conflict of interest.

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.”

On December 10, 1997, the Commission rendered Advisory Opinion No. 97-82, which held that:

“A former attorney with ADEM is not prohibited from assisting in matters relating to his law firm’s clients and ADEM, but is solely prohibited from personally appearing on his clients’ behalf.”

While Mr. Hayes would not be prohibited from working on the contract between his employer and the Department of Public Health, his employer may not use him as the “contact person” on the contract.

In other words, Mr. Hayes may not interact on behalf of his employer with the Department of Public Health regarding the contract for a period of two years after his retirement from the Department of Public Health.

Mr. Hayes had no involvement in the contract between this private entity and the Department of Public Health.

Based on the above law and the facts as provided, a retired Environmental Manager for the Department of Public Health in Madison County may accept employment with a private Montgomery-based company upon his retirement, when that company is under contract with the Department of Public Health; when he was not involved in the contractual process between the company and the Department of Public Health; provided, that for a period of two years after his retirement, the former employee does not interact on behalf of the company in any manner, including without limitation of on-line communication, either in person or on-line, with the Department of Public Health.

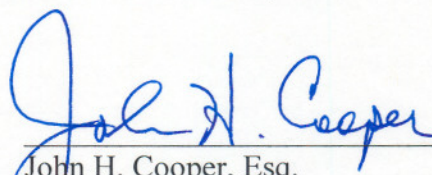
CONCLUSION

A retired Environmental Manager for the Department of Public Health in Madison County may accept employment with a private Montgomery-based company upon his retirement, when that company is under contract with the Department of Public Health; when he was not involved in the contractual process between the company and the Department of Public Health; provided, that for a period of two years after his retirement, the former employee does not interact on behalf of the company in any manner, including without limitation of on-line communication, either in person or on-line, with the Department of Public Health.

Ms. Sherry Bradley
Advisory Opinion No. 2007-23
Page five

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on December 5, 2007.



John H. Cooper, Esq.
Chair
Alabama Ethics Commission