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August 4, 2010

ADVISORY OPINION NO. 2010-07

Mr. Charles Rene' Sowell
General Counsel
Alabama Real Estate Commission
6028 Camelot Ct.
Montgomery, Alabama 36117

Revolving Door/Former General Counsel
For The Alabama Real Estate Commission
Becoming An Approved Instructor For
Courses Regulated By Or Licensed By The
Real Estate Commission

The former General Counsel for the
Alabama Real Estate Commission may
apply to the Alabama Real Estate
Commission to become an approved
instructor, either by forming his own school
and applying to the Real Estate Commission
for a school license, or teaching for a school
licensed by the Commission as an
independent contractor, as the Revolving
Door provisions of Sections 36-25-13(b)
and (d) are not applicable in this scenario.

Dear Mr. Sowell:

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 the former General Counsel for the Alabama Real Estate Commission, upon his leaving the Real Estate Commission, apply to the Real Estate Commission to become an approved instructor, teaching courses licensed by or approved by the Real Estate Commission?

FACTS AND ANALYSIS

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

Charles Rene' Sowell is the General Counsel for the Alabama Real Estate Commission. Their agency licenses real estate brokers, salespeople, companies and schools. They approve real estate instructors. His duties as General Counsel include directing investigations and audits on all the foregoing and prosecuting any violators in administrative hearings before the Commission. Specifically, he supervises the Chief Investigator who directly supervises the investigators and auditors. He does not do investigations or audits or participate in them.

He is very interested in perhaps one day after retirement becoming an approved instructor to teach continuing education courses to real estate brokers and salespersons. He is concerned about the ramifications of the Revolving Door provisions.

Mr. Sowell, first of all, would have to apply to the Real Estate Commission to become an approved instructor. This would allow him to teach courses in one of two ways: (1) He could form his own school and apply to the Real Estate Commission for a school license; or (2) he could teach for any school licensed by the Commission as an independent contractor. He states that if he chose option 1, he would be paid by salespersons and broker students in his class just like any other instructor is. If he chose option 2, he would be paid by the school licensed by the Commission.

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 set out guidelines as to what public officials and public employees may and may not do after leaving the public sector. Included in those prohibitions is the restriction that neither a public official nor public employee may, for a period of two years after leaving the public sector, lobby or otherwise represent clients (including their employer) before the agency from which they left.

In addition, the individual who personally participated in the direct regulation, audit or investigation of a private entity is prohibited from accepting employment with that private entity.

In the facts before the Commission, Mr. Sowell is not contemplating appearing before or representing clients before the Real Estate Commission; he is merely interested in obtaining a license as a Real Estate Instructor from the Real Estate Commission, so that he may teach approved courses.

Likewise, Mr. Sowell is not contemplating accepting employment with a private business with which he was personally involved in the direct regulation, audit or investigation of that private business.

The type of interaction contemplated by Section 36-25-13(b) involves a situation where an individual is attempting to use his or her influence with his or her former employer to receive a benefit for his or her client, employer, etc. That is not the situation here. In fact, this situation

is analogous to a former employee of the Alabama Bar Association contacting the Bar in order to obtain a license to practice law.

Based on this, the Revolving Door provisions do not apply, and there is nothing in the Ethics Law that would prohibit Mr. Sowell from: (1) forming his own school and applying to the Real Estate Commission for a school license and being paid by salespersons and broker students in his classes or (2) teaching for a school licensed by the Commission as an independent contractor and paid by the school licensed by the Commission.

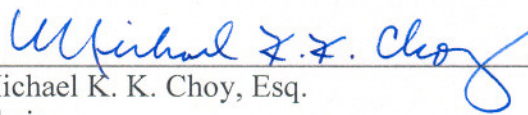
Based on the facts as provided and the above law, the former General Counsel for the Alabama Real Estate Commission may apply to the Alabama Real Estate Commission to become an approved instructor, either by forming his own school and applying to the Real Estate Commission for a school license, or teaching for a school licensed by the Commission as an independent contractor, as the Revolving Door provisions of Sections 36-25-13(b) and (d) are not applicable in this scenario.

CONCLUSION

The former General Counsel for the Alabama Real Estate Commission may apply to the Alabama Real Estate Commission to become an approved instructor, either by forming his own school and applying to the Real Estate Commission for a school license, or teaching for a school licensed by the Commission as an independent contractor, as the Revolving Door provisions of Sections 36-25-13(b) and (d) are not applicable in this scenario.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on August 4, 2010.



Michael K. K. Choy, Esq.
Chair
Alabama Ethics Commission