



STATE OF ALABAMA ETHICS COMMISSION



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August 6, 2014

ADVISORY OPINION NO. 2014-02

The Honorable April Weaver
Member, Alabama House of Representatives
House District No. 49
Alabama State House, Room No. 522-B
11 South Union Street
Montgomery, Alabama 36130

Conflict Of Interest/Member Of The
Legislature Employed By Baptist Health
System Performing Functions Relating To
Government Relations Outside Her
Legislative District

A member of the Legislature employed by Baptist Health System may undertake government relations in areas outside her legislative district; provided, that she does not use her office or the mantle of her office to obtain business opportunities for her employer.

A member of the Alabama House of Representatives may do business with public entities; provided, that the member of the Alabama House of Representatives is not personally and directly involved in any aspect of a transaction with public entities within her sphere of influence, including but not limited to, the solicitation or negotiation of contracts, as well as personally making

contact with public entities, regardless of the means of contact, as her direct contact with those public entities would be a use of office for personal gain.

It would not violate the Alabama Ethics Law for a Legislator to extend her job responsibilities to government relations in areas outside her legislative district.

However, should any public entity which the Legislator is dealing with in her private-sector capacity have an issue pending before the Legislature, the Legislator may not vote, attempt to influence or in any manner participate in the legislative process regarding that entity or that issue.

Any contracts entered into by the Legislator's business which are paid in whole or in part by state, county or municipal funds, must be filed with the Ethics Commission within ten (10) days after the contract has been entered into.

Dear Representative Weaver:

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 member of the Alabama House of Representatives, who is employed by Baptist Health System, expand her job responsibilities to include government relations in counties outside her legislative district?

FACTS AND ANALYSIS

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

April Weaver is a member of the Alabama House of Representatives. She represents District No. 49.

Representative Weaver is employed by Baptist Health System and currently serves as the Director of Business Development at Shelby Baptist Medical Center. In the future, while retaining her current responsibilities, she has an opportunity to support the health system through government relations in Jefferson, Talladega, St. Clair, Walker, Winston, and Blount counties. These counties are not within her legislative district.

In her expanded role, she will attend county commission and city council meetings, educate respective officials on Baptist Health System, and monitor issues relative to both general health care matters and those specifically affecting Baptist Health System.

Before assuming these new responsibilities, she has requested this opinion.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(27) defines a public official as:

“Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2.”

Section 36-25-1(2) defines a business with which the person is associated as:

“Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business.”

Section 36-25-5(a) states:

“No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the

public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.”

Section 36-25-5(c) states:

“No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.”

Section 36-25-2(b) states:

“It is also essential to the proper operation of government that those best qualified be encouraged to serve in government. Accordingly, legal safeguards against conflicts of interest shall be so designed as not to unnecessarily or unreasonably impede the service of those men and women who are elected or appointed to do so. An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.”

Section 36-25-1(8) defines a conflict of interest as:

“A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.”

Section 36-25-11 states:

“Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into.”

The Alabama Ethics Law, in part, was designed to allow public officials and public employees the same financial opportunities that are available to all other citizens of the state, provided, a conflict of interests does not exist.

On July 12, 2000, the Commission rendered Advisory Opinion No. 2000-20. That opinion states as follows:

“It is without question that many public officials and public employees at the state, county and municipal levels of government are in positions whereby they are able to exert, either overtly or covertly, undue influence or pressure on a public entity in order to obtain that entity's business. This pressure can be exerted either through the legislative process or, in some instances, the mantle of that individual's public office is sufficient to influence the transaction.

“Expressed differently, an individual, whose public office puts (her) in a position to influence matters that affect a public entity, should not be allowed to personally contact that public entity and solicit their business due to the covert pressure that may be present.

“One area that must be examined is, what is that public official's ‘sphere of influence’, i.e., jurisdiction? In other words, is that public official in a position to exert influence over a public entity with which he or she seeks business?

“The sphere of influence (jurisdiction) should be viewed as a downward pyramid, in that a state legislator's sphere of influence is much broader than, for example, a member of a local water authority. A legislator is in a position to influence matters that directly affect entities falling under the legislature's jurisdiction--municipalities, counties, school boards,

water authorities, etc., i.e., all public entities at the state, county and municipal levels of government. At the same time, a member of a local water authority is only in a position to influence matters within the jurisdiction of the water authority. That is, a member of County A's water authority is not in a position to have any influence over County B's school board, as the water board member's authority would not extend into school board matters, and he or she would not be in a position to influence matters affecting the school board. Therefore, it would not violate the Ethics Law for a member of County A's water authority to personally solicit public business from County B's school board.

"It should be pointed out that this prohibition relating to personal contact, applies solely to public officials seeking the business on behalf of their firm and not to the firm itself, as the Ethics Commission has no jurisdiction over a business with which a public official is associated. The law is designed to prohibit public officials from using their position to benefit that business and ultimately themselves. The use of office for personal gain arises when the public official becomes personally involved in the solicitation of the business. This solicitation or contact can be direct, either through personal, telephonic or written contact or indirect, by the use of the influence inherent in the office held. The Alabama Ethics Law does not prohibit other members of his or her firm from making contact; it merely prohibits the public official, himself/herself, from making the contact, either personally, telephonically or through correspondence.

Advisory Opinion No. 2000-20 further held that:

"Based on the facts as provided and the above law, an investment advisory firm, owned in part by a member of the Alabama House of Representatives, may do business with public entities; provided,

- 1) that the member of the Alabama House of Representatives not be personally and directly involved in any aspect of a transaction with public entities within his sphere of influence including, but not limited to the solicitation or negotiation of contracts as well as personally making contact with public entities, regardless of the means of contact, as (her) direct contact with those public entities would be a use of office for personal gain;
- 2) that (she) not use (her) position as a member of the legislature to exert influence over public entities which receive funding or other appropriations from the legislature or are otherwise within the legislator's sphere of influence in an effort to obtain business; and,
- 3) that any contracts entered into by the legislator's business, which are paid in whole or in part by state, county or municipal funds, are filed with the Ethics Commission within ten days after the contract has been entered into."

While the facts set out in Advisory Opinion No. 2000-20 are different from the facts at hand, they are close enough for comparison purposes.

Based on the precedent set in Advisory Opinion No. 2000-20, it would not violate the Alabama Ethics Law for Representative Weaver to extend her job responsibilities to government relations in areas outside her legislative district.

However, should any public entity which Representative Weaver is dealing with as an employee of Baptist Health System have an issue pending before the Legislature, Representative Weaver may not vote, attempt to influence, or in any manner participate in the legislative process regarding that entity or that issue.

Based on the above law and the facts as provided, a member of the Legislature employed by Baptist Health System may undertake government relations in areas outside her legislative district; provided, that she does not use her office or the mantle of her office to obtain business opportunities for her employer.

A member of the Alabama House of Representatives may do business with public entities; provided, that the member of the Alabama House of Representatives is not personally and directly involved in any aspect of a transaction with public entities within her sphere of influence, including but not limited to, the solicitation or negotiation of contracts, as well as personally making contact with public entities, regardless of the means of contact, as her direct contact with those public entities would be a use of office for personal gain.

Any contracts entered into by the Legislator's business, which are paid in whole or in part by state, county or municipal funds, must be filed with the Ethics Commission within ten (10) days after the contract has been entered into.

CONCLUSION

A member of the Legislature employed by Baptist Health System may undertake government relations in areas outside her legislative district; provided, that she does not use her office or the mantle of her office to obtain business opportunities for her employer.

A member of the Alabama House of Representatives may do business with public entities; provided, that the member of the Alabama House of Representatives is not personally and directly involved in any aspect of a transaction with public entities within her sphere of influence, including but not limited to, the solicitation or negotiation of contracts, as well as personally making contact with public entities, regardless of the means of contact, as her direct contact with those public entities would be a use of office for personal gain.

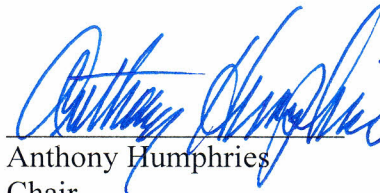
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AUTHORITY

By 3-2 vote of the Alabama Ethics Commission on August 6, 2014.



Anthony Humphries
Chair

Alabama Ethics Commission