



STATE OF ALABAMA ETHICS COMMISSION



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December 3, 2014

ADVISORY OPINION NO. 2014-08

Ms. Stephanie McGee Azar
Acting Commissioner
Alabama Medicaid Agency
501 Dexter Avenue
Montgomery, Alabama 36103-5624

Revolving Door/Former Employee Of The
Department Of Homeland Security Assigned
To Assist The Alabama Medicaid Agency
Retiring And Returning To Medicaid As A
Retired State Employee

A state employee, who was employed by
and paid through the Department of
Homeland Security, but assigned to assist
the Alabama Medicaid Agency, may, upon
his retirement, return as a retired state
employee to the Alabama Medicaid Agency
and be paid directly through Medicaid.

Should the retired state employee leave the
Medicaid Agency for any reason, the
"Revolving Door" provisions contained in
Section 36-25-13 would apply.

Dear Ms. Azar:

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

Do the “Revolving Door” provisions of the Alabama Ethics Law prohibit a state employee, formerly employed with the Department of Homeland Security, but assigned to assist the Alabama Medicaid Agency, from being hired upon his retirement from Homeland Security by Medicaid as a retired state employee?

FACTS AND ANALYSIS

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

Mr. Reuben E. Davidson, III, was an employee of the Department of Public Health (DPH) for more than 25 years until he resigned from that position in December of 2012. About a year and a half prior to his resignation from DPH, he was assigned to the Alabama Medicaid Agency to assist with Medicaid transformation by Dr. Donald E. Williamson, State Health Officer, who is the Chair of the Alabama Medicaid Transition Task Force. After his resignation from Public Health in 2012, Mr. Davidson was employed by the Department of Homeland Security and remains employed by the Department of Homeland Security today. Mr. Davidson was assigned by the Department of Homeland Security to Alabama Medicaid. Mr. Davidson is stationed at the Alabama Medicaid Agency and works on a daily basis for Alabama Medicaid. Alabama Medicaid reimburses the Department of Homeland Security for Mr. Davidson’s salary and benefits.

Mr. Davidson has been and continues to be a valuable resource to Alabama Medicaid due to his extensive experience and knowledge on various issues. Mr. Davidson is retiring effective December 31, 2014. The Alabama Medicaid Agency would like to hire him directly as a retired state employee beginning January 1, 2015. Alabama Medicaid is requesting a formal Ethics opinion to ensure that hiring Mr. Davidson as a retired state employee will not violate the “Revolving Door” provisions of the Ethics Law or any other Ethics rule.

The Alabama Ethics Law, Code of Alabama, 1975, Section 26-25-1(26) defines a public employee as:

“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(c) states:

"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:

"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 were created to put certain limitations on what public officials and public employees could do after their departure from public service. The law is designed to prevent individuals in positions of authority from creating opportunities for themselves after their retirement or otherwise having left State service.

Looking specifically at Section 36-25-13(c), public employees shall not represent their employer, clients, etc., before the **board, agency, commission or department of which he or she is a former employee** for two years after their departure.

Likewise, Section 36-25-13(d) prohibits certain named public officials and public employees in specific situations from entering into, soliciting or contracting with **the governmental agency of which the person was a member or employee** for a period of two years after their employment ceases.

As the Ethics Law is a criminal statute, with criminal penalties, the law must be interpreted in favor of the individuals who face the possibility of running afoul of the law and against the State.

In the facts as provided, Mr. Davidson, while performing his job responsibilities at the Alabama Medicaid Agency, was an employee of Homeland Security, paid by Homeland Security, and subject to their rules, regulations and instructions.

Likewise, in earlier years, when Mr. Davidson was an employee of DPH, he was subject to their rules, regulations and instructions, even though he performed functions for the Alabama Medicaid Agency.

Should Mr. Davidson be hired by Medicaid as a retired State employee, should he leave Medicaid for any reason, the Ethics Law and the “Revolving Door” provisions would be applied differently than in this scenario.

While the employment of an individual at one agency, performing functions for another agency, is done frequently, it may or may not be good public policy and is beyond the Ethics Commission’s jurisdiction.

However, based on a strict reading of the “Revolving Door” provisions, the “Revolving Door” provisions do not apply to Mr. Davidson, except as set out in this opinion.

Based on the facts as provided, and the above law, a state employee, who was employee by and paid through the Department of Homeland Security, but assigned to assist the Alabama Medicaid Agency may, upon his retirement, return as a retired state employee to the Alabama Medicaid Agency and be paid directly through Medicaid.

Further, should the retired state employee leave the Medicaid Agency for any reason, the “Revolving Door” provisions contained in Section 36-25-13 would apply.

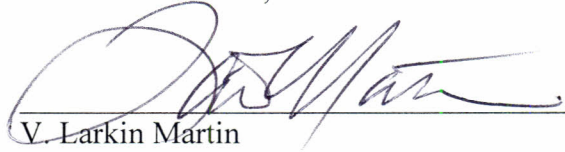
CONCLUSION

A state employee, who was employed by and paid through the Department of Homeland Security, but assigned to assist the Alabama Medicaid Agency may, upon his retirement, return as a retired state employee to the Alabama Medicaid Agency and be paid directly through Medicaid.

Should the retired state employee leave the Medicaid Agency for any reason, the “Revolving Door” provisions contained in Section 36-25-13 would apply.

AUTHORITY

By 3-1 vote of the Alabama Ethics Commission on December 3, 2014.

A handwritten signature in dark ink, appearing to read 'V. Larkin Martin', is written over a horizontal line.

V. Larkin Martin

Acting Chair in the absence of the Chair
Alabama Ethics Commission