



STATE OF ALABAMA ETHICS COMMISSION



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April 1, 2015

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ADVISORY OPINION NO. 2015-05

Mr. Les Moreland
Immediate Past Chairman
Wiregrass Rehabilitation Center
Board of Directors
795 Ross Clark Circle
Dothan, Alabama 36303

Conflict Of Interest/Wiregrass
Rehabilitation Center (WRC, Inc.) Hiring
Member Of Legislature As Executive
Director

WRC, Inc. may hire and a member of the
Legislature may serve as the Executive
Director of the Wiregrass Rehabilitation
Center, but he must abstain from and may
not attempt to influence or in any manner
participate in an issue that uniquely affects
himself or his employer.

A member of the Legislature/Executive
Director of WRC, Inc. may vote on budget
matters coming before the Legislature when
money is allocated to WRC, Inc., as the
allocation is not negotiated but set by the
State on a per capita/per day rate as
reimbursement for actual client
expenditures.

Should the issue of re-evaluating the rates
authorized by the State of Alabama for
services of this type come before the
Legislature, Representative Lee may not
vote, attempt to influence or in any manner
participate in that issue.

Dear Mr. Moreland:

The Alabama Ethics Commission is in receipt of your request for a formal Advisory Opinion of this Commission, and this opinion is issued pursuant to that request.

QUESTION PRESENTED

May the Wiregrass Rehabilitation Center (WRC) hire a member of the Legislature to serve as its Executive Director, and what, if any, limitations will be placed upon the Director's actions as a Legislator?

FACTS AND ANALYSIS

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

Paul Lee is a member of the Alabama House of Representatives representing the Wiregrass area. He has been offered a position as Executive Director with the Wiregrass Rehabilitation Center (WRC) in Dothan.

As Executive Director, Representative Lee would not be directly involved in any negotiations with the State regarding the fees reimbursed to WRC for client services or rental/lease agreements for facilities rented to State agencies. The COO and the CFO for the Center currently handle those roles and will continue to do so, should Representative Lee become the new Executive Director. His role will be purely ministerial in bringing those matters to the Board of Directors for approval at the appropriate times as renewals are needed or budgets approved.

State funding for WRC operations goes to three areas:

- 1) Rental/lease agreements for Vocational Rehab and Alabama Career Center for the use of office space and/or buildings on WRC's campus;
- 2) Fees for referral services provided by WRC as State Vocational Rehabilitation Counselors deem WRC's services are needed and appropriate; and,
- 3) Reimbursement for adult daycare services provided at three locations.

It should be noted that none of the funding is negotiated but is set by the State for WRC and 21 other service providers throughout the State of Alabama. Reimbursements are made on a per capita/per day rate. This funding offsets the costs of the various programs, but the State funding does not fully fund the program.

Over the last year, the six immediate past Chairmen of the WRC Board have been brainstorming about potential candidates to fill the Executive Director position and what characteristics that person must have. The individuals listed the following qualifications:

- 1) Must be passionate about serving the disabled.
- 2) Must be able to balance the mission of the Center (helping clients) versus the economic realities of each business unit at the Center. They have to maximize their limited resources to help the most people. Candidate must have a proven track record in business.
- 3) Must have an impeccable reputation in the community and maintain the trust of those who support their mission.
- 4) Must be a proven leader, who can build a strong leadership team of senior staff, and develop new and existing business units that provide training and jobs for those they serve and the funds that they need to continue their mission.

WRC has a 40 member board. Representative Lee's name was suggested by three different board members who have known him over the years in many different roles where he has demonstrated the qualities sought. Almost all of the experiences where they got to know and respect Representative Lee came prior to his election to the Alabama Legislature in November of 2010. Representative Lee's current position in the Legislature has no bearing on their interest in hiring him. Mr. Moreland states, as far as WRC is concerned, they would be happy if he did not continue in the Legislature at some point in the future, and could devote his full attention to WRC.

The request for this Advisory Opinion also serves as letters of recommendation from several of the current and former board members.

These current and former members set out in some detail how their personal experiences with Representative Lee, both before and after his taking office, make him highly qualified for the position of Executive Director.

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 17-13-40."

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

“(8) CONFLICT OF INTEREST. 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 36-25-2(a)(3) states:

“No public office should be used for private gain other than the remuneration provided by law.”

Section 36-25-2(a)(5) states:

“The attainment of one or more of the ends set forth in this subsection is impaired whenever there exists a conflict of interest between the private interests of a public official or a public employee and the duties of the public official or public employee.”

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.”

As the Commission has previously pointed out, serving in the Legislature is a part-time position, with members being citizen legislators. The Ethics Law recognizes that these individuals should have the same financial opportunities that are available to the general public; provided, a conflict of interest does not exist.

The conflict of interest which otherwise would exist with a member of the Legislature employed by an entity receiving funding from the State is alleviated by the fact that there are no budget negotiations between WRC and the State of Alabama. All monies allocated to WRC are specified by specific rate on a per capita/per day amount. This amount is set and cannot be changed by WRC. They do not control the amount charged to clients nor do they set the reimbursement rate. They merely submit the documentation establishing the number of clients served, and receive reimbursement accordingly.

As these rates are previously established, there is no prohibition in Representative Lee, as a member of the Legislature, voting on the State’s budget.

At the same time, should an issue come before the Legislature that specifically or uniquely affects WRC and, therefore, Representative Lee, he may not vote, attempt to influence or in any manner participate in the issue before the Legislature that uniquely impacts WRC and his employment.

Based on the above law and the facts as provided, WRC, Inc. may hire and a member of the Legislature may serve as the Executive Director of the Wiregrass Rehabilitation Center, but he must abstain from and may not attempt to influence or in any manner participate in an issue that uniquely affects himself or his employer.

In addition, a member of the Legislature/Executive Director of WRC, Inc. may vote on budget matters coming before the Legislature when money is allocated to WRC, Inc., as the allocation is not negotiated but set by the State on a per capita/per day rate as reimbursement for actual client expenditures.

Further, should the issue of re-evaluating the rates authorized by the State of Alabama for services of this type come before the Legislature, Representative Lee may not vote, attempt to influence or in any manner participate in that issue.

CONCLUSION

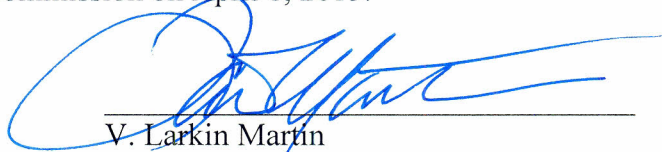
WRC, Inc. may hire and a member of the Legislature may serve as the Executive Director of the Wiregrass Rehabilitation Center; but he must abstain from and may not attempt to influence or in any manner participate in an issue that uniquely affects himself or his employer.

A member of the Legislature/Executive Director of WRC, Inc. may vote on budget matters coming before the Legislature when money is allocated to WRC, Inc., as the allocation is not negotiated but set by the State on a per capita/per day rate as reimbursement for actual client expenditures.

Should the issue of re-evaluating the rates authorized by the State of Alabama for services of this type come before the Legislature, Representative Lee may not vote, attempt to influence or in any manner participate in that issue.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on April 1, 2015.



V. Larkin Martin
Acting Chair in the absence of the Chair
Alabama Ethics Commission