



# STATE OF ALABAMA ETHICS COMMISSION



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August 5, 2015

## ADVISORY OPINION NO. 2015-11

The Honorable Oliver Robinson  
Member, Alabama House of Representatives  
Post Office Box 610343  
Birmingham, Alabama 35261

Thing Of Value/Daughter Of Public Official  
Networking And Interviewing For Jobs  
With Companies That May Be Principals  
And Individuals Who May Be Lobbyists

While the Ethics Law prohibits a lobbyist, subordinate of a lobbyist, or a principal from providing a thing of value to a public official or their family member, the Ethics Law does not prohibit the adult child of a public official from seeking employment, even in circumstances where they will be meeting with, networking with, or interviewing with principals or lobbyists, provided, the public official has not used their position to unduly influence the hiring of their adult child, as long as the clear terms of the Ethics Act are complied with by all parties involved.

Dear Representative Robinson:

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

### **QUESTIONS PRESENTED**

- 1) Does the Ethics Law prohibit the adult child of a public official from seeking employment and applying for jobs, networking and interviewing with companies that may be principals or individuals who may be lobbyists?
- 2) May these individuals introduce the adult child or forward their resume or provide other networking assistance to other entities that may be principals or individuals who may be lobbyists?
- 3) Are prospective employers, particularly those which are principals or lobbyists, restricted in their ability to employ an individual merely because they are the daughter of a public official?

### **FACTS AND ANALYSIS**

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

Oliver Robinson represents District 58 in the Alabama House of Representatives. He requests this opinion regarding the Ethics Law and any restrictions on his daughter's ability, as a new law school graduate to seek employment in the private sector. Representative Robinson is both a businessman in the private sector as well as a State Representative, an office he has held for 17 years.

As background, Representative Robinson's daughter recently graduated from Jones School of Law in Montgomery. She is also a 2012 graduate of the University of Alabama. During her educational career, she has interned in a variety of offices, including with judges and congressional offices. Through these experiences, she has decided that she, like her father, has an interest in business, government, politics and law. Therefore, she is interested in pursuing a career that touches on these subjects.

It is common for job seekers to set up meetings and informal discussions where a job candidate introduces himself or herself and meets people who may have employment opportunities now or in the future. In other situations, a person may forward a resume or help in making additional introductions with others who may have thoughts on career opportunities. It is part of the process by which any person looking to start his or her career learns more about the job market and seeks employment. At the same time, prospective employers are using these opportunities to meet and evaluate job candidates. For those subject to the Ethics laws, questions can arise about what is allowed in this environment as it has here.

In looking for a job, Representative Robinson's daughter, like any other job candidate, could potentially meet with a wide range of people. These may include some individuals who Representative Robinson has come to know over the years. Some may be personal friends; some may simply be acquaintances with good reputations in their field or people he may respect.

Representative Robinson's daughter's potential employers could include any number of businesses, nonprofits, associations, law firms and lobbying firms that work in the areas she has chosen. In many cases, these organizations may be principals of lobbyists, and in some cases, the actual individuals she may be meeting with may be lobbyists.

It is her personal decision to choose a career. After 17 years of education, she, too, has become friends with and acquainted with people she's met throughout her father's career in government and before. They may know her, she may know them in many cases. The question presented is given the fact that her father is a public official, whether those covered by the ethics laws would be precluded from introducing her to others or forwarding her resume or providing similar networking assistance, interviewing or hiring her. Another practical issue that arises is whether these organizations can take her to lunch or dinner in the course of a job interview. Finally, the questions ask us to determine whether prospective employers, particularly those which are principals or who are lobbyists, are restricted in their ability to employ her because she is the daughter of a public official.

These questions must be analyzed from the perspective of several people—the Representative, his daughter, principals, and lobbyists, all of whom are under the jurisdiction of the Ethics Commission to some degree. In the Special Session of 2010, the Legislature included a new section, Section 36-25-5.1(a), which states as follows:

“No lobbyist, subordinate of a lobbyist or principal shall offer or provide a **thing of value** to a public employee or **public official or to a family member** of the public employee or family member of the public official; **and no** public employee or public official or **family member** of the public employee or family member of the public official **shall** solicit or **receive** a thing of value from a lobbyist, subordinate of a lobbyist or principal. Notwithstanding the foregoing, a lobbyist or principal may offer or provide and a public official, public employee, or candidate may solicit or receive items of de minimis value.” (emphasis added)

Section 36-25-1(15) defines a family member of the public official as:

“ The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official.”

Section 36-25-1(34)(a) defines a thing of value as:

“Any gift, **benefit, favor, service**, gratuity, tickets or passes to an entertainment, social or sporting event, unsecured loan, other than those loans and forbearances made in the ordinary course of business, reward, promise of future employment, or honoraria or other item of monetary value.” (emphasis added)

Section 36-25-1(34)(b)(3) provides exceptions to the definition of “thing of value,” however, when it states:

“The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

3. Anything given by a friend of the recipient **under circumstances which make it clear that it is motivated by a friendship** and not given because of the recipient’s official position. Relevant factors include whether **the friendship preexisted the recipient’s status** as a public employee, public official, or candidate and whether gifts have been previously exchanged between them.” (emphasis added)

6. **Opportunities** and benefits...**available to the public**...(emphasis added)

These are, of course, separate exceptions and do not have to be read together.

Finally, any Opinion which the Commission issues should be analyzed against the backdrop of the clearly-stated legislative purpose of the Ethics Act, and the Commission has an equally important duty to decide these opinions in a way so as not to undermine those purposes as expressed in Section 36-25-2, “Legislative findings and declarations; purpose of chapter”. In this regard the Code says in part:

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.”

While the Ethics Law was designed to prevent the use of public office for personal gain, thereby maintaining the integrity of government, it was also designed in such a way as to not

serve as a hindrance to or discourage qualified people from seeking employment in the public sector or accepting a position of public service. This applies to qualified individuals who may be deterred from engaging in public service based on an unreasonable application of the ethics laws to their family members, but also to the family members who had no choice in the matter of coming under the jurisdiction of the Ethics laws. There are, however, limits to what is allowed.

Not to be overlooked, there are equally applicable restrictions placed on the public official that are relevant here. Section 36-25-5(a) states:

“(a) 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...**” (emphasis added)

The financial reward of a job would be “personal gain.”

Section 36-25-5(c) states:

“(c) 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 of the public official [or] any other person...**” (emphasis added)

Another clearly stated purpose of the Act is that “no public office should be used for private gain other than the remuneration provided by law.” Ala. Code § 36-25-2(a) (1975).

Compliance with the Ethics Act as outlined herein requires all parties concerned, even officials’ family members, to be vigilant in making sure that the restrictions provided in the language of the Code are followed. They, not the Commission, are the only parties who can police that behavior. Obviously, the scenario presented lends itself to possible abuse and for that reason, both the Representative and his daughter, as well as any lobbyist or principal involved, are advised to monitor their conduct to be in compliance and this opinion does not absolve them of their responsibilities under the Act.

All of that being said, however, while Section 36-25-5.1 prohibits a lobbyist, a subordinate of a lobbyist or a principal from providing a thing of value to a public official or a family member thereof, it does not prohibit the family members of public officials or public employees from seeking employment in their chosen field on the same terms as others who may apply and within exceptions to the definition of “thing of value.” Any favor “given by a friend of the recipient under circumstances which make it clear that it is motivated by a friendship and not given because of the recipient’s official position” is by the clear language of the statute an exception to the definition of “thing of value,” as is an opportunity generally available.

Within the confines of the restrictions outlined herein, Representative Robinson's daughter may interview with, contact and network with businesses and individuals who may, as well, be principals and lobbyists if the relationship is a relationship that exists outside of her father's official status, i.e., a personal relationship in the same way that anyone in the general public would be able to. The same exception applies to those entities and individuals who are personal friends of Representative Robinson or his daughter outside of his position as a member of the House of Representatives, within the guidelines that are found in the Code itself.

Moreover, Representative Robinson cannot use his position or influence in any respect to gain special treatment or favor for his daughter in the interviewing or hiring process. This includes soliciting interviews on her behalf.

Any potential employer who may be a principal or lobbyist must apply the same criteria in selecting her for an interview and in their dealings with her as a job candidate that they would for any other candidate, and ultimately with respect to compensation and benefits if hired.

The point here is that she should be given the same opportunity as everyone else, free from influence by her father, and on terms that would apply to any job candidate applying for the jobs she's interested in, but no more than that and irrespective of her father's official position. Although parents often use connections to help a child land a job the child might not get otherwise, not all parents are public officials subject to the Ethics laws. To interpret the Code differently would not only be contrary to the clear terms of the Code which the Legislature has given us, but would also undermine the principles they articulated in passing the Act, as well.

As Representative Robinson correctly points out, it is not uncommon in the job interviewing process for a prospective employer to take the interviewee to lunch or dinner in the course of a job interview. That activity would be allowed, as well, within the restrictions as outlined herein and provided that the public official has not unduly influenced the interview or opportunity for the interview. The same logic applies to the forwarding of resumes, making recommendations to other potentially interested entities, etc. and ultimate hiring decisions.

In this regard the holdings in our formal opinions provide some guidance and their logic is relevant here. See, e.g., AO-96-94 (family member of school superintendent may apply with same school board as long as the superintendent does not use his position to influence hiring); AO 97-22 (Superintendent of school system may not make recommendations affecting a family member's job).

### **CONCLUSION**

While the Ethics Law prohibits a lobbyist, subordinate of a lobbyist, or a principal from providing a thing of value to a public official or their family member, the Ethics Law does not

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prohibit the adult child of a public official from seeking employment, even in circumstances where they will be meeting with, networking with, or interviewing with principals or lobbyists, provided, the public official has not used their position to unduly influence the hiring of their adult child, as long as the clear terms of the Ethics Act are complied with by all parties involved.

**AUTHORITY**

By 5-0 vote of the Alabama Ethics Commission on August 5, 2015.

  
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Brig. Gen (R) Edward F. Crowell (USAF)  
Chair  
Alabama Ethics Commission