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December 2, 2015

ADVISORY OPINION NO. 2015-18

The Honorable Margie Wilcox
State Representative, District 104
3024 Airport Blvd.
Mobile, Alabama 36606

This opinion addresses the issues raised merely from the perspective of the Alabama Ethics Law. For issues relating to service on County Commissions and whether or not County Commissioners may maintain outside employment, it is suggested that the requestor of this opinion contact the Attorney General's Office.

A determination needs to be made by the Office of the Attorney General as to whether or not the local act establishing the Mobile County Commission would prohibit a Commission member from having outside business interests.

Conflict Of Interest/Member Of Alabama House Of Representatives Running For Seat On The Mobile County Commission

A member of the Alabama House of Representatives may run for a seat on the Mobile County Commission; provided, that all activities relating to the campaign are conducted on her own time, whether after hours, weekends, etc., and that there is no

use of State of Alabama or legislative resources to assist her in the campaign.

Should the member of the Alabama House of Representatives win election to the Mobile County Commission, she should contact the Attorney General's Office regarding the applicability of other state laws and the holding of two offices of profit.

Member Of Alabama House Of Representatives/Member Of Mobile County Commission Operating Transportation Company In Mobile County

Under the Alabama Ethics Law, a member of the Alabama House of Representatives, who wins a seat on the Mobile County Commission, may maintain her ownership in Mobile Bay Transportation, Inc. However, that Commission member can take no action as a member of the County Commission that would provide a benefit to herself or her company, Mobile Bay Transportation, Inc., including but not limited to any benefit to her company or detriment to her competitors.

Should the member of the House of Representatives be elected to a seat on the Mobile County Commission and, therefore, resign her seat in the Legislature, she may not, for the remainder of the term for which she was elected, represent clients, including her company and her company's clients, before any legislative body or any branch of state or local government, including the executive and judicial branches of government and the Legislature or any board, agency, commission or department thereof.

Should the member of the House of Representatives serve her complete term in office, she may not, for a period of two years after the expiration of her term, serve for a fee as a lobbyist or otherwise represent clients, including her company and her company's clients, before the Alabama Legislature.

A public official may not solicit anything but a campaign contribution from a lobbyist, a subordinate of a lobbyist, or a principal.

A public official may not solicit new business from individuals or entities who may have an issue pending before the legislative body on which the public official serves, and where that public official is expected to take official action, or any other individual or group who may feel coerced or otherwise pressured into giving business to the public official's private company.

While the public official, on behalf of her private business, may interact with current customers, she cannot use her position as a public official or the influence of that office to obtain more business from those customers or take part in any official action as a member of that public body which would affect those clients.

Dear Representative Wilcox:

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.

FACTS AND ANALYSIS

At the outset, it should be pointed out that this opinion merely addresses the issue raised from the perspective of the Alabama Ethics Law and does not consider any other body of law outside the Ethics Act in its conclusion.

The facts as have been presented to us are as follows:

Margie Wilcox currently is an elected member of the Alabama House of Representatives. She represents District 104.

She has recently opened a campaign account and begun raising funds to support her candidacy for the Mobile County Commission, District 3.

Representative Wilcox owns all the stock in, and is the President of Mobile Bay Transportation, Inc. Her company provides non-emergency transportation for long-term care facility residents and provides airport and other transportation services, including Yellow Cab service in Mobile and Baldwin Counties.

She is concerned as to what, if any, involvement she can have in Mobile Bay Transportation, Inc. if she is elected to the Mobile County Commission. The specific questions she asks are:

- 1) "Can I maintain my ownership in the company?"
- 2) "If I can be involved, please give me parameters for what I can do, for example, can I maintain my title as President?"
- 3) "If I hire a management company, can I still sign checks on a weekly basis?"
- 4) "Can I solicit new customers or interact with current customers?"

While the Ethics Law recognizes that public officials and public employees should have the same financial opportunities as other members of the public, their activities can be prohibited and, at a minimum limited, if a conflict of interest exists between the public responsibilities and private interests.

Representative Wilcox acknowledges that she is a public official as defined in Ala. Code § 36-25-1(27) (1975).

Mobile Bay Transportation, Inc. is a “business with which she is associated” as defined in Ala. Code § 36-25-1(2) (1975).

Other relevant code sections for Representative Wilcox to remember are:

Section 36-25-1(8) which 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 36-25-2(b) which 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 36-25-5(a) which 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) which 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 36-25-5(e) which states:

“No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity.”

Section 36-25-13(a) which states:

“No public official shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, department, or legislative body, of which he or she is a former member for a period of two years after he or she leaves such membership. For the purposes of this subsection, such prohibition shall not include a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.”

Section 36-25-13(b) which states:

“Notwithstanding the provisions of subsection (a) of this section, no public official elected to a term of office shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer, before the board, agency, commission, department, or legislative body of which he or she is a former member for a period of two years following the term of office for which he or she was elected, irrespective of whether the member left the office prior to the expiration of the term to which he or she was elected.

For the purposes of this subsection, such prohibition shall not include a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.”

Section 36-25-23(a) which states:

“No public official elected to a term of office shall serve for a fee as a lobbyist or otherwise represent a client, including his or her employer, before any legislative body or branch of state or local government, including the executive and judicial branches of government, and including the Legislature of Alabama or any board, agency, commission, or department thereof, during the term or remainder of the term for which

the official was elected. For purposes of this subsection, such prohibition shall not include a former member of the Alabama Judiciary who as an attorney represents a client in a legal, non-lobbying capacity.”

Representative Wilcox first asks whether she may maintain her ownership interest in Mobile Bay Transportation, Inc. if elected to the Mobile County Commission. She states that service on the Mobile County Commission is considered to be full-time employment. This opinion addresses the issues from the Ethics Law’s perspective only. The Code Sections regarding County Commissions, generally, and the outside employment opportunities available to individuals serving on a full-time or part-time County Commissions, specifically, fall outside the Ethics Law and will not be addressed by this opinion. The requestor should contact the Attorney General’s Office regarding that issue.

If she is able to maintain both positions, in light of the Ethics Law’s directive that public officials and public employees are entitled to have the same financial opportunities available to the general public, provided a conflict of interest does not exist, (see Ala. Code § 36-25-2(a)), Representative Wilcox may continue to operate Mobile Bay Transportation, Inc. within the restrictions of the Act. She could not use her office or the mantle of her office (whether as a member of the House of Representatives or a member of the Mobile County Commission) to benefit herself, her company or her company’s clients. These restrictions answer questions number two and number three, as well.

Another issue Representative Wilcox raises is whether she can solicit new customers or interact with current customers. Representative Wilcox is prohibited from soliciting anything but a campaign contribution from a lobbyist (36-25-23(c)). She therefore, cannot solicit new business from a lobbyist. In addition, she cannot solicit a “thing of value” from a subordinate of a lobbyist or a principal, as a solicitation for new business would fall within the definition of “thing of value.” Ala. Code § 36-25-5.1 (1975). Therefore, she may not contact these groups as potential new customers and solicit business from them absent the request falling within one of the exceptions to the definition of “thing of value.” See, e.g. § 36-25-1(34)(b)(10), and provided she does not use the fact that she is a public official to solicit business. In addition, she cannot solicit business from an individual or entity that has or may have matters pending before the Mobile County Commission where she would be expected to act, or from other individuals or entities who may feel coerced into doing business with her company.

She may interact with current customers; however, she cannot use her position as a member of the County Commission, if elected, or the influence of that office as a means to obtain more business from those customers. Nor can she take part in any official action as a member of the County Commission which would uniquely affect those clients.

This issue has been addressed numerous times in the past. Advisory Opinion No. 2008-08, rendered on June 4, 2008, held that:

“A member of the Red Mountain Park Greenway and Recreational Area Commission may not vote, attempt to influence or in any manner participate in any business dealings or transactions between his employer, United States Steel (USS), and the Red Mountain Park Greenway and Recreational Area Commission, on whose Board he serves.”

Likewise, Advisory Opinion No. 2005-34 held that:

“Should a matter involving the Chamber of Commerce come before the County Commission, the Chairman of the County Commission employed as Executive Director of the Chamber of Commerce must refrain from voting, attempting to influence or otherwise participating in the matter in his position as Chairman of the County Commission, nor may he interact with the County Commission or otherwise represent the Chamber on the issue in his position as Executive Director of the Chamber of Commerce.”

Another issue that comes up in this scenario is what, if any, dealings may Representative Wilcox have with the Alabama Legislature if she wins a seat on the Mobile County Commission and resigns from the Legislature.

Pursuant to 13(a) and 23(a), for a period of two years after the end of her term of office, Representative Wilcox may not lobby or otherwise represent her company, or her company's clients back before the Alabama Legislature. If she resigns from her seat prior to the expiration of her term, she is prohibited from lobbying or otherwise representing clients, including her company or her company's clients before any legislative body or any branch of state or local government, including the executive and judicial branches of government and the Legislature or any commission or department thereof for the remainder of the term for which she was elected.

CONCLUSION

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AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on December 2, 2015.



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