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December 2, 2015

ADVISORY OPINION NO. 2015-19

Mr. Elma Averett
Former Clarke County Commissioner
12966 Hwy. 43
Grove Hill, Alabama 36451

Revolving Door/Former Clarke County
Commission Member Accepting
Employment With Clarke County Sheriff's
Department

As the Clarke County Commission and Clarke County Sheriff's Department are separate entities, there is generally nothing that would prohibit a former member of the County Commission from accepting employment with the Sheriff's Department prior to the expiration of two years, provided he did not use his position as a member of the County Commission to create the opportunity for himself.

A former member of the Clarke County Commission may accept employment with the Clarke County Sheriff's Department even though the County Commission provides a budget for the Sheriff's Department, when there had been no discussions between the Commission member and the Sheriff's Department about his possible employment prior to his leaving office or at any time during the budget process.

Mr. Elma Averett
Advisory Opinion No. 2015-19
Page two

While the Ethics Law does not prohibit a public official from accepting employment with another public entity prior to the expiration of two years, a former member of the Clarke County Commission may not represent the Sheriff's Department back before the County Commission on which he served for a period of two years after having left that position.

Dear Mr. Averett:

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.

QUESTION PRESENTED

May a former member of the Clarke County Commission, who left office in 2014, accept employment with the Clarke County Sheriff's Department?

FACTS AND ANALYSIS

At the outset, it should be pointed out that this opinion merely addresses the issues 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 provided to this Commission are as follows:

Elma Averett served eight years as a County Commissioner in Clarke County, Alabama. He was seeking his third term in 2014, but was defeated. He is currently considering going to work with the Clarke County Sheriff's Department in a non-law enforcement capacity such as an administrative position or a process server.

The County Commission provides funding for the Sheriff's Department, and there is a budget for the Sheriff's Department approved by the County Commission on an annual basis.

With the exception of the budget, the County Commission does not have any oversight of the activities of the Sheriff's Department. If the Sheriff requests to hire someone, it is the

Sheriff's decision as to whom he hires. The County Commission's only involvement is to make certain that the Sheriff stays within his budget.

The County Commission has nothing to do with the day-to-day operations of the Sheriff's Department. For example, if the Sheriff requests new vehicles, the County Commission looks at the budget to make certain the money is there for the purchases. They do not approve or disapprove the purchases.

Mr. Averett was last involved in a budget for the Sheriff's Department between July and October of 2014. This would have been for Calendar Year 2015.

Mr. Averett was defeated in November of 2014, and left office soon after. He states that he had no discussions with the Sheriff about his interest in employment until December 2014 or January 2015, after his having left office. He states there were no discussions prior to his being defeated for re-election or while the budget was being put together. This was confirmed by Sheriff Ray Norris, who stated that Mr. Averett was a cornerstone of the County Commission, and that everyone was surprised when he was defeated. Mr. Averett confirms that he was a public official under Ala. Code § 36-25-1(27) (1975).

The applicable Code Sections are Ala. Code §§ 36-25-13(a), (b) and (e) (1975), which state as follows:

- “(a) 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.
- (b) 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.

- (e) 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 of the Ethics Law place certain prohibitions on the activities of public officials and public employees after they leave office. For a period of two years, no former public official or public employee may represent clients, including their employer, before the board, agency or commission from which they left.

Section 36-25-13(e) prohibits an individual, who has personally participated in the direct regulation, audit or investigation of a private entity, from accepting employment with that private entity for a period of two years. It does not prohibit an individual from leaving one public sector employer for another public sector employer.

This issue was addressed on September 6, 2000, in Advisory Opinion Nos. 2000-49 and 2000-50. Those opinions held that:

“Section 36-25-13(d) makes a distinction, in that, it prohibits public officials or public employees, who personally participated in the direct regulation, audit or investigation of a **private** business, corporation or partnership, from accepting employment with that **private** entity for a period of two years. Section 13(d) does not prohibit a public employee from accepting employment with another public-sector entity regardless of whether or not he or she personally participated in the direct regulation, audit or investigation of that public entity.” (Emphasis added.)

It should be noted that Section 13(d), appearing in the Code in the year 2000, is now Section 13(e).

Even though an individual may move from one public-sector entity to another, they may not for a period of two years represent their new employer back before the entity by which they were employed or on which they served.

Of importance in this scenario is the fact that, while the Clarke County Commission provides a budget for the Clarke County Sheriff’s Department, the Clarke County Commission does not have oversight as to how the money is spent. They merely make certain that all monies spent are within the budget.

Also critical to this analysis is the fact that Mr. Averett, while serving on the Clarke County Commission and taking part in the budget discussions, had no discussions with the

Sheriff's Department about any interest in employment. In fact, at the time, Mr. Averett was running his campaign for re-election and was focused on that and not employment.

CONCLUSION


As the Clarke County Commission and Clarke County Sheriff's Department are separate entities, there is generally nothing that would prohibit a former member of the County Commission from accepting employment with the Sheriff's Department prior to the expiration of two years, provided he did not use his position as a member of the County Commission to create the opportunity for himself.

A former member of the Clarke County Commission may accept employment with the Clarke County Sheriff's Department even though the County Commission provides a budget for the Sheriff's Department, when there had been no discussions between the Commission member and the Sheriff's Department about his possible employment prior to his leaving office or at any time during the budget process.

While the Ethics Law does not prohibit a public official from accepting employment with another public entity prior to the expiration of two years, a former member of the Clarke County Commission may not represent the Sheriff's Department back before the County Commission on which he served for a period of two years after having left that position.

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