STATE OF ALABAMA
ETHICS COMMISSION

MAILING ADDRESS
P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS
RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104



Thomas B. Albritton
Director

TELEPHONE (334) 242-2997
FAX (334) 242-0248
WEB SITE: www.ethics.alabama.gov

February 3, 2016

**ADVISORY OPINION NO. 2016-05**

Mr. Othni Lathram
Director
Alabama Law Institute
Alabama State House, Suite 207
11 South Union Street
Montgomery, Alabama 36130

Advisory Opinion No. 2015-14 does not alter or affect the principle set out in Opinion of the Justices No. 317, 474 So. 2d. 700 (Ala. 1985), or change the definition of a conflict of interest found at Section 36-25-1(8). It does, however, stand for the presumption that a conflict of interest exists when a legislator's employer drafts legislation.

Dear Mr. Lathram:

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

Does Advisory Opinion No. 2015-14 change the long-standing principle that a legislator may sponsor and vote on legislation that affects him or her so long as it does not affect the legislator in a unique way that is different than the effect that it has on a broad class?

## FACTS AND ANALYSIS

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

Othni Lathram is the Director of the Alabama Law Institute and seeks clarification regarding certain implications of revised Advisory Opinion No. 2015-14 issued on October 7, 2015 to Representative Patricia Todd. Specifically, he questions whether Advisory Opinion No. 2015-14 alters the circumstances in which a conflict of interest may arise for legislators in the context of sponsoring and voting for legislation that has an impact on the legislator or his or her employer but which the employer does not draft.

Advisory Opinions are written in response to specific questions and scenarios and as such the facts underlying them matter. Opinion 2015-14 was drafted in regards to a public official employed within an office where legislative matters are central to her employer's mission. She asked whether she could seek to influence legislation important to her employer. In 2015-14 we determined that when legislation involves an issue important enough for your employer to draft it, we presume that employee of the drafting organization has a unique interest in it. When legislators act within the legislative body of which they are members, "conflict of interest" rules govern their conduct in that body.

Questions have arisen about what restrictions 2015-14 may place on the ability of legislators to sponsor, speak in favor of, and vote on matters coming before the Legislature in which their private sector employers may have an interest or opinion but do not draft. Under the premise that the Alabama Legislature consists of citizen lawmakers who serve in the Legislature part-time and routinely hold outside employment, this question arises frequently.

The Code of Alabama defines a "Conflict of Interest" to include "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." (Ala. Code § 36-25-1(8)(1975)).

The keystone in answering this question remains the Opinion of the Justices No. 317, 474 So. 2d. 700 (Ala. 1985). In that Opinion, the Supreme Court addressed the question of educators holding office in the Legislature or legislators who had family members employed in the education system, voting on issues affecting teacher salaries and education budget matters. The Court said that a legislator in that position could sponsor legislation or vote on a pending matter, "so long as the bill does not affect the legislator in a way different from the way it affects the other members of the class to which he belongs."

With respect to those legislators who question how they should reconcile their competing interests in terms of conflict of interest regarding proposed legislation within that body, we first say that there are two considerations here—the relationship of the drafter of the legislation to the legislator, and the relationship of the specific piece of legislation to the interests of the legislator. Both of these are addressed by the conflict of interest rules.

The legislator must first ask whether he or she is employed by the organization that drafted the legislation, or whether it was drafted by a "business with which they are associated" or which has the authority to hire or fire the legislator. If the answer to any of these questions is "yes," then the legislator can have no part in sponsoring, encouraging others to support the legislation, or voting for it. If the answer is "no" to these questions, but the employer endorses legislation but does not draft it, then the legislator must ask whether he or she, their families, or any business with which they are associated are otherwise uniquely affected by the proposed legislation (for example, whether terms of the legislation affect the conditions of the legislator's employment; how large is the class affected by the legislation? Is the employer "uniquely affected" by the legislation?, etc.). The fact that an employer may "endorse" legislation does not in and of itself disqualify the legislator from introducing or voting on the legislation, but is a factor to consider along with the legislator's other circumstances in determining whether a conflict of interest exists.

If the legislation is on an issue affecting a large class, not drafted by the legislator's employer and neither the passage nor the defeat of the measure will uniquely affect the legislator, or his or her employer, family or business with which they are associated, then even if the measure is supported or opposed by his or her employer, as we have traditionally recognized the legislator may sponsor or vote on the legislation.

Advisory Opinion No. 2015-14 does not alter or in any way change the long-standing principle set forth above. What we add in terms of restrictions derived from 2015-14 in relation to the question asked is that if the legislator's employer has drafted the legislation, there is an implied benefit to the legislator's employer and a presumed conflict of interest with its employee who is also a legislator. Central to the Ethics Law is the prohibition against using your office for your personal benefit, or that of a member of your family or a business with which you are associated. Without going into any further detail, if the legislator's employer has drafted the legislation, the legislator has a conflict of interest and must not only recuse himself or herself from voting on the matter but may not attempt to influence or in any manner participate in that legislation. The fact that an employer may "endorse" legislation does not in and of itself disqualify the legislator from introducing or voting on the legislation, but is a factor to consider along with the legislator's other circumstances in determining if a conflict of interest exists.

## CONCLUSION

Advisory Opinion No. 2015-14 does not alter or affect the principle set out in Opinion of the Justices No. 317, 474 So. 2d. 700 (Ala. 1985), or change the definition of a conflict of interest found at Section 36-25-1(8). It does, however, stand for the presumption that a conflict of interest exists when a legislator's employer drafts legislation.

## AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on February 3, 2016.

Edward F. Crowell

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