



STATE OF ALABAMA ETHICS COMMISSION



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ADVISORY OPINION NO. 2016-08

Ms. Patricia Anderson
Executive Director
Alabama Real Estate Commission
1201 Carmichael Way
Montgomery, Alabama 36106

Conflict Of Interest/Members Of The
Alabama Real Estate Commission (AREC)
Serving On Various Alabama Association
Of Realtors (AAR) Committees

Members of the Alabama Real Estate
Commission (AREC) may serve on various
Alabama Association of Realtors (AAR)
Committees and may take action in that
capacity, provided, their actions do not
affect them or a family member personally
or any business with which they are
associated differently than it affects all
individuals and businesses engaged in the
real estate industry in Alabama.

Dear Ms. Anderson:

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 appointed members of the Alabama Real Estate Commission (AREC) participate in volunteer committees and in leadership roles with the Alabama Association of Realtors (AAR) during their service as Commissioners?

FACTS AND ANALYSIS

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

The Alabama Real Estate Commission (AREC) is the State licensing and regulatory agency for real estate licensees in Alabama. The members of the Commission are public officials appointed by the Governor from a list of three names submitted by the Alabama Association of Realtors (AAR), a professional association for the real estate industry in Alabama. The AAR is a membership organization consisting of individuals and businesses active in the real estate industry in the State of Alabama. The Alabama Real Estate Commission does not regulate the AAR.

Members of the AREC are public officials subject to the Ethics Law.

As a general rule, members of the Real Estate Commission frequently participate in both AAR activities and serve on various committees, often serving in leadership positions. While the Alabama Association of Realtors has a policy regarding conflicts of interest, they are concerned that there may be Ethics Law implications regarding three specific scenarios.

Scenario No. One:

The Alabama Association of Realtors has a Bill Read Committee that meets the first day of each annual legislative session to read bills that include a reference to any of the issues of interest to them. Some of these bills may also be of interest to the Alabama Real Estate Commission. The committee includes approximately 10 people. The committee may be e-mailed additional bills to read during the course of a legislative session. Each member of the committee is asked to comment on any bill content. The Real Estate Commission asks whether or not it would be a violation of the Alabama Ethics Law for a sitting Real Estate Commissioner to serve on this committee.

Scenario No. Two:

The Alabama Association of Realtors has a Governmental Affairs Committee that discusses industry issues and determines official positions for AAR on several bills

annually. The committee includes members from all across the State and includes past State presidents of the Association. They ask whether it is a violation of the Alabama Ethics Law for a sitting Real Estate Commissioner to serve on this committee.

Scenario No. Three:

The Alabama Association of Realtors has a ten member Executive Committee composed of officers and regional vice presidents and a 200+ member Board of Directors. Both bodies are responsible for adopting official positions for the Association in numerous areas including legislation. They ask is it a violation of the Alabama Ethics Law for a sitting Real Estate Commissioner to serve on either of these and to serve as an officer, regional vice president or member of the Board of Directors.

Before beginning analysis of these scenarios, it is important to point out that the Ethics Commission has no jurisdiction over the Alabama Association of Realtors' policies and practices. If the Alabama Association of Realtors disapproves of members of the Real Estate Commission serving on the various committees, then they can limit their involvement in AAR activities, including but not limited to serving on Boards, Committees, etc. This is an internal matter that the Commission cannot address.

Regarding the Commission members, however, all three scenarios can be answered within the following guidelines.

Section 36-25-5(a) prohibits public officials from using their public office for the benefit of themselves, a member of their family or a business with which they are associated. Therefore, a member of the Real Estate Commission, who may be serving on an Alabama Association of Realtors committee, may participate as any other Association member would, provided, that individual takes no action that would personally benefit themselves, a family member or a business with which they are associated in a unique manner. Family member and business with which associated are defined as follows:

Section 36-25-1(15) defines a family member of a 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(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.”

These non-legislative public officials must avoid any issue in which they have a conflict of interest. Moreover, they may not use public property under their control for the benefit of a business with which they are associated. See Ala. Code § 36-25-5(c) and (f).

The Ethics Law defines a conflict of interest in Ala. Code § 36-25-1(8) 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.”

In addition, Ala. Code § 36-25-5(f) further addresses conflicts of interest. It states:

“A conflict of interest shall exist when a member of a legislative body, public official, or public employee has a substantial financial interest by reason of ownership of, control of, or the exercise of power over any interest greater than five percent of the value of any corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation; or who is an officer or director for any such corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation.”

The key question to be asked each time this issue comes up is whether or not the AREC member's actions affect them, a member of their family or a business with which they are associated, differently or uniquely than it affects other members of the Alabama Association of Realtors and/or individuals engaged in the real estate industry.

The AAR is registered as a principal in the State of Alabama; therefore, all involved should be aware of the prohibitions contained in Ala. Code § 36-25-5.1. Under Section 5.1, a lobbyist, a subordinate of a lobbyist, and a principal are all prohibited from offering or providing a thing of value to a public employee, public official or to a family member of either. While this issue has not been raised in this request, it is important to note.

Internal AAR policies aside, if members of the Alabama Real Estate Commission serve in these capacities while simultaneously serving as Commissioners, they may not use their position in any manner that would provide a personal benefit to themselves, a family member or a business with which they are associated.

CONCLUSION

Members of the Alabama Real Estate Commission (AREC) may serve on various Alabama Association of Realtors (AAR) Committees and may take action in that capacity, provided, their actions do not affect them or a family member personally or any business with which they are associated differently than it affects all individuals and businesses engaged in the real estate industry in Alabama.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on April 6, 2016.



Jerry L. Fielding, Ret. Circuit Judge
Chair
Alabama Ethics Commission