



# 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

#### COMMISSIONERS

James Jerry Wood, Esq.  
Stewart Hill Tankersley, M.D.  
Frank C. "Butch" Ellis, Jr., Esq.  
Jerry L. Fielding, Ret. Sr. Circuit Judge  
Charles Price, Ret. Circuit Judge

Thomas B. Albritton  
Executive Director

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

April 6, 2016

### ADVISORY OPINION NO. 2016-09

The Honorable Randy Davis  
Alabama House of Representatives  
District No. 96  
Post Office Box 1083  
Daphne, Alabama 36526

#### Use Of Office For Personal Gain/Member Of Legislature Accepting Outside Employment

A member of the Alabama Legislature may accept employment with an entity doing business in his district and elsewhere, as long as the offer is made based on reasons unrelated to his public service as a public official; he may not, however, use his position as a member of the Legislature to benefit himself or his employer.

Should his employer have matters pending before the Legislature, the member of the Legislature may not vote, attempt to influence or in any manner participate in an issue that directly and materially affects himself or his employer differently than it affects all other similarly situated businesses.

#### Lobbying/Member Of Legislature Lobbying State Or Local Officials On Behalf Of Employer

A member of the Legislature cannot lobby State officials or local officials on behalf of their employer.

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Dear Representative Davis:

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**

May a member of the Alabama Legislature accept employment with an entity doing business in his district and elsewhere, and if so what are the restrictions on his actions while employed?

### **FACTS AND ANALYSIS**

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

Randy Davis is currently serving his fourth term as a member of the Alabama House of Representatives, representing District No. 96, which covers Mobile and Baldwin counties.

He is considering a change of employment and has requested an Ethics Opinion so as to ensure that he complies with the Act if he accepts this employment. Representative Davis is a public official as defined by the Alabama Ethics Law.

Representative Davis states that he is discussing several options, including full-time employment, part-time employment and being hired as an independent contractor or consultant to serve as a Public Information Officer and/or Human Resources Advisor to Arc Terminals Holdings, LLC.

Arc Terminals Holdings, which is a registered principal, provides bulk storage, terminaling, and transloading services. Arc has five facilities in Mobile County in proximity to the Port and rail facilities, as well as other facilities in other states.

Representative Davis's title with Arc Terminals Holdings, LLC would consist of one or more of the following: Public Information Officer, Human Resources Advisor and Community Relations for the Mobile County terminals.

His job duties in each of these potential roles would be as follows:

- 1) Public Information Officer – Interaction with the media, members of the public, environmental and other groups of concerned citizens, community leaders, city officials and employees, county officials and employees, and local boards and commissions on behalf of Arc Terminals.
- 2) Human Resources Advisor – Interaction with Arc Terminals’ management and employees regarding employment and human resource matters.
- 3) Community Relations – Interaction with local media, members of the public, environmental and other groups of concerned citizens, community leaders, city officials and employees, county officials and employees, and local boards and commissions on behalf of Arc Terminals.

The first consideration is Ala. Code § 36-25.5.1 which prohibits a lobbyist, a subordinate of a lobbyist, or a principal from offering or providing a thing of value to a public employee, public official, or their respective family members.

Under this Section, Arc Terminals, Inc. could not offer and Representative Davis could not accept this position, as an offer of future employment is a “thing of value,” unless the job offer and compensation are given under circumstances which make it clear that “the thing is provided for reasons unrelated to the recipient’s public service as a public official or public employee.” Ala. Code § 36-25-1(34)(b)(10).

Representative Davis states that his qualifications for this position include 25 years of experience in marketing and public relations related work in both the private and public sectors, and that he understands that this experience is the basis for the offer. His job with Arc would be consistent with what he has done for 25 years for other employers. Arc Terminals has confirmed in writing to the Commission that Representative Davis’s previous years of experience in Public Relations within both the public and private sectors give him the marketing and public relations experience Arc desires, as does the length of time he has lived in the community.

An additional consideration for Representative Davis is Ala. Code § 36-25-23(a) which prohibits public officials from lobbying or otherwise representing clients (including their employer) before any legislative body or any branch of State or local government.

The Commission staff followed-up with Representative Davis to determine the degree of interaction he would have with city officials and employees, county officials and employees, and local boards and commissions if he served in the positions of Public Information Officer and Community Relations.

Representative Davis stated, "My role with Arc Terminals, aside from Human Resources and employee safety programs, will be serving as the Public Information Officer of the local facilities. My interaction with county and local officials will be 'informational' only." He stated he would provide them with basic information about the company and only if asked. If hired, he stated that his job duties would not require him to represent his employer before any branch of government at any level or before local boards and commissions. If representation is needed before these groups at any point, Arc confirmed with Representative Davis that others within the company would handle that. He would be expected to represent the company at local events, however (for example, cancer fundraiser, Chamber of Commerce, United Way, etc.).

Public officials cannot use their position so as to provide personal gain to themselves or businesses with which they are associated; and they may not vote on issues 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.

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

"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."

Regarding conflicts of interest that may arise for him as he serves in the Legislature, we draw his attention to Advisory Opinion No. 2016-05 issued on February 3, 2016. The Commission stated,

"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."

Representative Davis states that he will not lobby or otherwise interact with any State of Alabama officials or with any State boards or commissions on behalf of Arc Terminals. He cannot vote or participate in any matters pending or brought before the Alabama Legislature that would directly or materially relate to or affect Arc Terminals in some way different than the general public.

Assuming the offer of employment is unrelated to his official position, which it appears to be, Representative Davis may accept employment with Arc Terminals. If hired, however, Representative Davis must remain mindful of the prohibitions contained in Ala. Code § 36-25-23(a) and the rules relating to conflict of interests as discussed herein.

### **CONCLUSION**

A member of the Alabama Legislature may accept employment with an entity doing business in his district and elsewhere, as long as the offer is made based on reasons unrelated to his public service as a public official; he may not, however, use his position as a member of the Legislature to benefit himself or his employer.

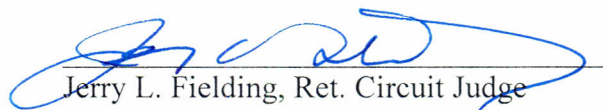
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**AUTHORITY**

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



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