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**ADVISORY OPINION NO. 2018-15**

The Honorable Jill Hall Lee  
District Attorney  
Eighteenth Judicial Circuit  
PO Box 706  
Shelby County Courthouse  
Columbiana, Alabama 35051

**Revolving Door/Position of Authority**

A Chief Trial Attorney/Chief Assistant District Attorney may contract back with his employer after retirement when he did not hold a position of authority because he did not have 1) hiring/firing authority or the ability to influence hiring or firing decisions in any way that is greater than any other employee, 2) purchasing or contracting authority or the ability to influence those decisions, 3) authority to make decisions regarding, or to influence the awarding of ,grants or other awards, and 4) was not the employer's designated agent with authority to accomplish any of the prescribed actions in § 36-25-13(d), and the employee did not use his position as leverage to obtain the new position in violation of Ala. Code §36-25-5(a).

Dear Ms. Lee:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion of this Commission, and this opinion is issued pursuant to that request.

### **FACTS**

Roger Hepburn has been employed by the State of Alabama and has been a member of the Retirement System of Alabama for a total of twenty-seven years and eleven months. He has been employed as an Assistant District Attorney for almost twenty-three of those years. For the past eleven years and four months he has served in the Shelby County District Attorney's Office, Eighteenth Judicial Circuit. He has served there as the Chief Trial Attorney/Chief Assistant District Attorney for approximately the last four years. He is one of three Assistant District Attorneys who have been similarly situated in a supervisory role.

During his tenure as a Chief, Roger's duties were as follows:

- 1) Prosecuting felony cases;
- 2) Acting as a liaison between trial team members and the Court;
- 3) Negotiating settlement of felony cases;
- 4) Providing advice to junior lawyers regarding trial matters and settlement of felony cases;
- 5) Providing advice and assistance to law enforcement as requested.

Roger at no time had the authority to make or recommend purchases, expend public funds, or to negotiate or approve contracts, grants or awards. Roger did not have the authority to hire or fire personnel, and his authority to recommend the hiring or firing of such did not extend beyond that of any of the other employees of the office whose opinions might be sought.

### **QUESTION PRESENTED**

Roger Hepburn wishes to retire from the Shelby County District Attorney's Office and then to enter into a contractual relationship with that same office to perform certain, limited legal services. Does this potential contract violate the "Revolving Door?"

### **FACTS AND ANALYSIS**

There is no violation of the Ethics Act if Mr. Hepburn enters into the proposed contract with the Shelby County District Attorney's Office as a retired state employee. The relevant code section is as follows:

Ala. Code §36-25-13

(d) Except as specifically set out in this section, no public official, director, assistant director, department or division chief, purchasing or procurement agent having the

authority to make purchases, or any person who participates in the negotiation or approval of contracts, grants, or awards or any person who negotiates or approves contracts, grants, or awards shall enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which the person was a member or employee for a period of two years after he or she leaves the membership or employment of such governmental agency.

A materially similar situation was previously addressed by this Commission in Advisory Opinion 2003-30. In that Opinion, a public employee occupied a position called “Manager of Systems Development.” This person did not 1) make or recommend purchases, 2) negotiate, recommend or approve contracts, grants or awards, or 3) hire, fire or recommend the hiring or firing of personnel. Similarly, Mr. Hepburn’s primary job functions have been advisory in nature and mentoring younger attorneys in the office. He did not have any authority as contemplated or described in Ala. Code §36-25-13(d). His title of “Chief” does not confer on him the position of authority as the Commission has recognized falls under the operation of this section. See also Advisory Opinion 2017-03 (Jackie Graham).

### **CONCLUSION**

A Chief Trial Attorney/Chief Assistant District Attorney may contract back with his employer after retirement when he did not hold a position of authority because he did not have 1) hiring/firing authority or the ability to influence hiring or firing decisions in any way that is greater than any other employee, 2) purchasing or contracting authority or the ability to influence those decisions, 3) authority to make decisions regarding, or to influence, the awarding of grants or other awards. and 4) was not the employer’s designated agent with authority to accomplish any of the prescribed actions in § 36-25-13(d) and the employee did not use his position as leverage to obtain the new position in violation of Ala. Code §36-25-5(a).<sup>1</sup>

### **AUTHORITY**

By 5-0 vote of the Alabama Ethics Commission on December 19, 2018.



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

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<sup>1</sup> See Advisory Opinion 2003-30