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June 7, 2023

ADVISORY OPINION NO. 2023-03

Carol E. Clarke
City Council Member
City of Birmingham

Public Official / Private Employment /
Associated Business / Revolving Door

The Ethics Act does not prohibit a public official from accepting employment with a private, nonprofit organization while serving in her public position provided she does not use her position, including any confidential information or equipment, facilities, time, materials, human labor, or other public property under her discretion or control, to obtain the opportunity, she does not regulate the private organization, she does not interact with her employer on behalf of her private entity or vice-versa, and the offer of employment is not made for the purpose of corruptly influencing her official action.

A public official may not vote or participate in any matter that would materially affect the financial interest of a business with which she is associated.

A copy of any contract entered into between a business with which a public official is associated that is to be paid in whole or in part with state, county, or municipal funds must be filed with the Ethics Commission within ten (10) days after it is entered into.

Dear Ms. Clarke:

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

Ms. Clarke is a member of the Birmingham City Council. Ms. Clarke is considering accepting a position as the Chief Executive Officer with Neighborhood Housing Services of Birmingham, a non-profit organization and affiliate of NeighborWorks America. Ms. Clarke states that she has been through a lengthy and competitive application and interview process to arrive at the position of being offered this position. Neither Neighborhood Housing Services of Birmingham nor NeighborWorks America is a registered principal in Alabama.

Neighborhood Housing Services has historically administered various programs for the City of Birmingham's Community Development Department, such as down-payment assistance for low-to-moderate-income (LMI) first-time homebuyers and a critical repair program for LMI homeowners.

Ms. Clarke is not aware of any pending or upcoming matters before the City Council involving Neighborhood Housing Services. She has not interacted with Neighborhood Housing Services on behalf of the City Council. She has not participated in any matter involving Neighborhood Housing Services while serving on the City Council and, during the interview process with Neighborhood Housing Services, abstained from voting/discussing a matter before the City Council involving the allocation of funding to the critical repair program.

QUESTIONS PRESENTED

Does the Ethics Act prohibit a public official from accepting employment with a private, non-profit organization while serving in her public position?

ANALYSIS

Ms. Clarke is an elected member of the City Council for the City of Birmingham. Therefore, she is a public official. Public officials may not use their official position to obtain

personal gain for themselves, a family member, or a business with which they are associated.¹ Public officials may not use equipment, facilities, time, materials, human labor, or other public property under their discretion or control for the private benefit of any person in a way that would materially affect their financial interest.²

The Ethics Act prohibits public officials/employees from soliciting or accepting employment from a private entity if they personally participate in the direct regulation, audit, or investigation of that private entity.³ The Ethics Act also prohibits public officials/employees from soliciting/receiving anything for the purpose of corruptly influencing an official action.⁴ Public officials/employees may also not use or disclose confidential information gained from their position in a way that could result in financial gain for any person or business.⁵

Based on the facts presented, there is no indication that Ms. Clarke has used her position as a City Council member to obtain the opportunity to work as the CEO of Neighborhood Housing Services of Birmingham. Ms. Clarke also has not participated in the direct regulation, audit, or investigation of Neighborhood Housing Services. Therefore, there is nothing in the Ethics Act that would prohibit her from accepting the offer for the CEO position.

¹ Ala. Code § 36-25-5(a): No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.

² Ala. Code § 36-25-5(c): No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.

³ Ala. Code § 36-25-13(f): 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.

⁴ Ala. Code § 36-25-7(a): No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive anything for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

⁵ Ala. Code § 36-25-8: No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business.

If Ms. Clarke were to accept the CEO position, she may not use her position as a City Council member to benefit Neighborhood Housing Services or NeighborWorks America as they would become businesses with which she is associated. She would not be permitted to vote or participate in any matter that would uniquely benefit her employer. She would also not be permitted to interact with the City on behalf of her employer while she is a Council member and for two years after her term ends. She also may not interact with her employer on behalf of the City. Additionally, if Neighborhood Housing Services of Birmingham or NeighborWorks America were to enter into a contract that is to be paid in whole or in part with state, county, or municipal funds, a copy of the contract would need to be filed with the Ethics Commission within ten (10) days after the contract is entered into.⁶

CONCLUSION

The Ethics Act does not prohibit a public official from accepting employment with a private, nonprofit organization while serving in her public position provided she does use her position, including any confidential information or equipment, facilities, time, materials, human labor, or other public property under her discretion or control, to obtain the opportunity, she does not regulate the private organization, she does not interact with her employer on behalf of her private entity or vice-versa, and the offer of employment is not made for the purpose of corruptly influencing her official action.

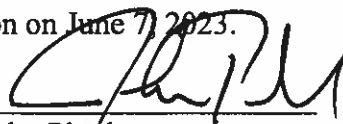
A public official may not vote or participate in any matter that would materially affect the financial interest of a business with which she is associated.

A copy of any contract entered into between a business with which a public official is associated that is to be paid in whole or in part with state, county, or municipal funds must be filed with the Ethics Commission within ten (10) days after it is entered into.

⁶ Ala. Code § 36-25-11: Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into.

AUTHORITY

By 4/0 vote of the Alabama Ethics Commission on June 7, 2023.



John Plunk
Chair
Alabama Ethics Commission