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November 1, 1995

**ADVISORY OPINION NO. 95-96**

Representative Ken Guin  
House of Representatives  
District No. 14  
Post Office Box 470  
Carbon Hill, Alabama 35549

Conflict Of Interests/  
Legislator Representing  
Employee Before Civil  
Service Board To Which He  
Makes Recommendations.

A Legislator may not  
represent employees before a  
civil service board to which  
said legislator makes  
recommendations for  
appointments to the board.

Dear Representative Guin:

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.

**QUESTION PRESENTED**

Is it a violation of the Alabama Ethics law for a legislator who is a member of a county legislative delegation that participates in making recommendations to the Governor for vacancies on the county civil service board to represent a former employee of the county as his attorney before that county civil service board?

### FACTS AND ANALYSIS

The Alabama Ethics law, Code of Alabama, Section 36-25-13(a) states:

"No public official shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board agency, commission, department, or legislative body, of which he or she is a former member for a period of two years after he or she leaves such membership. For the purposes of this subsection, such prohibition shall not include a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity."

Section 36-25-5(a) states:

"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."

Section 36-25-1(25) states:

"PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in section 17-16-2, Code of Alabama, 1975.

Section 36-25-2(b) in pertinent parts states:

"An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided."

Section 36-25-8 states:

"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."

Section 36-25-1(8) in pertinent part states:

"CONFLICT OF INTEREST. 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."

An attorney in the State of Alabama who is also a State Legislator has been employed by a former employee of Walker County as an attorney in a matter pending before the Walker County Civil Service Board.

The legislator is a member of the Walker County Legislative Delegation and participates in making recommendations to the Governor for vacancies on the civil service board.

Act No. 321 of the 1976 Regular Session states:

"The Act provides the following conditions are placed on the governor with regard to this appointment...if the same person is nominated by all members of the delegation, the person that is nominated shall be appointed. If the legislative delegation is divided, the nominee favored by the majority shall be appointed."

In the case at bar, the legislator wishes to represent a client before a board over which he makes recommendations for appointments. This would at least give the appearance of using the official office of representative to influence the civil service board.

### CONCLUSION

It is inevitable that an elected official appearing before a board over which he makes

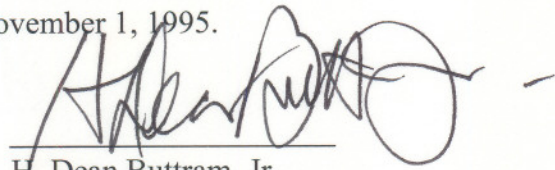
recommendations for appointments, may have an increased influence when they appear before that board. This is especially true as relates to bias, either real or perceived.

The integrity of the civil service board must remain unbiased, unbiased towards the employee, and unbiased towards the employer. The fact that a person with the power of recommending persons for appointments over the board would, at a minimum, create an appearance of bias.

It would not be proper for a legislator to appear as an attorney before a board over which he has power to recommend appointments to that board.

**AUTHORITY**

By 4 - 0 - 1 vote of the Alabama Ethics Commission on November 1, 1995.

A handwritten signature in black ink, appearing to read 'H. Dean Buttram, Jr.', written over a horizontal line.

H. Dean Buttram, Jr.  
Chair  
Alabama Ethics Commission