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ADVISORY OPINION NO. 96-114

Representative Chris Pringle
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Conflict Of Interests/Member Of
House Of Representatives Obtaining
Employment With The National
Federation of Independent Business.

A member of the Alabama House of
Representatives may accept
employment as a Territory Manager
for the National Federation of
Independent Business; provided, he
not use his position as a Legislator to
generate customers, involve himself
in legislation which would affect his
employment interests with the
National Federation of Independent
Business, or otherwise lobby the
Legislature on behalf of the National
Federation of Independent Business.

Dear Representative Pringle:

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

May a member of the Alabama House of Representatives accept employment as a Territory Manager with the National Federation of Independent Business?

FACTS AND ANALYSIS

The National Federation of Independent Business is an organization of independent businesses that support the American free enterprise system based on private ownership, fair competition, and the opportunity to pursue entrepreneurship. The guiding principle of the NFIB is to determine, by an opinion of the membership, policy positions on legislative and administrative issues affecting small and independent business.

The NFIB serves as an advocate and guardian of both small and independent business, and competitive free enterprise, by educating and informing members on political and economic issues, educating and influencing lawmakers and other public officials on the interests, problems, and needs of small independent businesses, educating the general public, the news media and private sector employees on the interests, problems, and needs of small and independent businesses, and the values of the free enterprise system, determining positions on economic and legislative issues based on a majority opinion of the NFIB membership, influencing the development, and the content of public policy and legislation that affects small independent business, motivating NFIB members to actively participate in the political and legislative process, and the election of responsive public officials, continually striving to identify and serve the changing needs of NFIB members, and continuing to increase the influence of small and independent business through NFIB membership growth.

The NFIB provides training, prospects, and support programs which enable Territory Managers to achieve growth in their territory. Each NFIB Territory Manager plays a major role in presenting and promoting the interests of small business by informing and educating entrepreneurs regarding State and Federal legislative issues that affect business profit margins. The Territory Manager's thrust is to continue to increase the influence of independent business through developing and enhancing membership growth by selling memberships at the community level.

Each Territory Manager is responsible for personally contacting local businesses in an assigned territory. Through the use of a sales presentation, business owners are enrolled as members of NFIB. In addition, Territory Managers call on existing members annually and give a report on NFIB State and Federal legislative issues and renew the membership.

The primary responsibility of Territory Managers is to recruit new members and renew existing members.

There are no lobbying activities related to the position, in fact, NFIB policies prohibit an elected official from serving as a lobbyist on NFIB's behalf.

The NFIB has its own policies concerning conflicts of interests and public office. The NFIB policy on holding public office is as follows: *"If you are interested in pursuing public office, you may not represent any affiliation or endorsement with NFIB whatsoever. For employees involved in direct lobbying positions for NFIB; however, holding an elected position or appointed governmental position which might impair the employee's effectiveness on behalf of NFIB is prohibited. Failure to comply with this policy may result in immediate termination of employment without prior notice. This policy will only apply where it is not prohibited by state law."*

The NFIB conflict of interest policy states that *"You may not engage in overt partisan political activities by active recruitment or public endorsement of candidates or causes in connection with your employment activities or whenever the name NFIB is used."*

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(8)(a) states:

"(8) 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."

Section 36-25-1(25) states:

"(25) 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."

Section 36-25-1(2) states:

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. 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."

Section 36-25-5(a) states:

"(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."

Based on the facts as provided and the above law, it would not be a conflict of interests for Representative Pringle to accept employment as a Territory Manager with NFIB; provided,

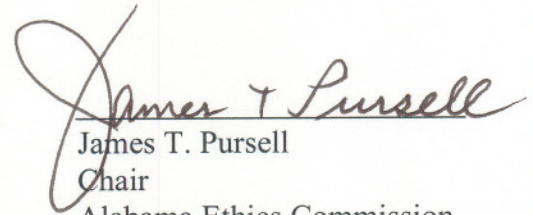
- (1) He not use his position as a Legislator to generate clients, and
- (2) That he not involve himself in any legislation which has a direct impact on his personal interest as an employee of NFIB.

CONCLUSION

A member of the Alabama House of Representatives may accept employment as a Territory Manager for the National Federation of Independent Business; provided, he not use his position as a Legislator to generate customers, involve himself in legislation which would affect his employment interests with the National Federation of Independent Business, or otherwise lobby the Legislature on behalf of the National Federation of Independent Business.

AUTHORITY

By 4 - 0 vote of the Alabama Ethics Commission on November 20, 1996.


James T. Pursell
Chair
Alabama Ethics Commission