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April 17, 1996

ADVISORY OPINION NO. 96-37

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Revolving Door/
Employment With Business
Regulated By Employee
Within Two Year Period.

Subsequent to June 19, 1996
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.

Subsequent to June 19, 1996
no public employee shall
serve for a fee as a lobbyist or
otherwise represent clients,

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including his or her employer before the board, agency, commission, or department of which he or she is a former employee for a period of two years after he or she leaves such employment.

A public official or public employee who leaves public employment prior to June 19, 1996 is not barred by the provisions of Section 36-25-13 and may seek employment with a business, corporation, or partnership that he personally participated in the direct regulation of; provided however, that should the public employee lobby before, or contract with the former employer, he may not do so for a period of three years after leaving the public employment, unless he notifies the Ethics Commission of these activities within five days of undertaking them.

Dear Mr. Haden:

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 AND ANALYSIS

For approximately six years, J. Leland Holman was employed by the Division of

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Emergency Medical Services (EMS) for the Department of Public Health. At the Department of Public Health Mr. Holman worked as an Emergency Medical Services Representative III. His duties included the management and administration of State Trauma Systems Development Program and the Alabama EMS Medical Directors Course. Mr. Holman further corresponded with Federal and State Agencies, Emergency Medical Services Organizations, physicians, and hospitals.

By virtue of being a full-time staff member in the principle state agency for EMS, Mr. Holman participated in discussions with other Division employees concerning existing and proposed legislation, regulations, rules, and policies governing the work of Emergency Medical Technicians and Paramedics.

On August 7, 1995, Mr. Holman left his employment with the Department of Public Health and began working as Executive Director of the Alabama Chapter of the American College of Emergency Physicians (Alabama ACEP). Alabama ACEP is a non-profit corporation whose members are Emergency Physicians practicing in Alabama. Alabama ACEP is exempt from Federal income taxation under Section 501(c)(6).

The mission of Alabama ACEP is to support quality emergency medical care and to promote the interests of Emergency Physicians in Alabama.

In 1994, Alabama ACEP developed the Alabama EMS Medical Directors Course in conjunction with the Department of Public Health. The course was subsequently approved by the Department.

Alabama Act No. 95-276 authorizes Alabama ACEP to designate one member of the State Emergency Medical Services Advisory Board and to appoint one member of the State Emergency Medical Control Committee. The board and the committee are staffed by members of the Department of Health. Further, the advisory board and the committee constitute the two leading policy making bodies for emergency medical services in Alabama. Through the advisory board and the committee, the members of Alabama ACEP are intimately involved in assisting the Department of Health to develop, to implement, and to administer its Emergency Medical Services Program.

Mr. Holman will not receive any additional or special compensation for engaging in any of the proposed activities. The only compensation that Mr. Holman will receive for his regular duties as well as these extra activities will be his regular salary and benefits from Alabama ACEP.

In subsequent correspondence from the requestor of this opinion, Mr. Holman is

somewhat unclear as to the ramifications of Section 36-25-13.

There are several questions and subquestions which will be addressed individually.

Question No. 1 applicability of Section 36-25-13 (Effective June 19, 1996) Actions of former public officials or public employees prohibited for two years after departure:

Does Alabama Act No. 95-194, part of which became effective on October 1, 1995, and more specifically, Section 36-25-13 which will become effective on June 19, 1996, apply to Mr. Holman who terminated his employment with the Division on July 28, 1995 and began work at Alabama ACEP on August 7, 1995?

Section 36-25-13 as amended by the 1995 revised Alabama Ethics Law, prevents a public employee or public official from participating in certain activities for a period of two years after leaving his public employment. As has previously been stated, the effective date of Section 36-25-13 is June 19, 1996.

Section 36-25-13 states:

"(a) 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.

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

(c) 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.

(d) 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.

(e) No former public official or public employee of the state may, within two years after termination of office or employment, act as attorney for any person other than himself or herself or the state, or aid, counsel, advise, consult or assist in representing any other person, in connection with any judicial proceeding or other matter in which the state is a party or has a direct and substantial interest and in which the former public official or public employee participated personally and substantially as a public official or employee or which was within or under the public official or public employee's official responsibility as an official or employee. This prohibition shall extend to all judicial proceedings or other matters in which the state is a party or has a direct and substantial interest, whether arising during or subsequent to the public official or public employee's term of office or employment.

(f) Nothing in this chapter shall be deemed to limit the right of a public official or public employee to publicly or privately express his or her support for or to encourage others to support and contribute to any candidate, political committee as defined in Section 17-22A-2, referendum, ballot question, issue, or constitutional amendment."

As Mr. Holman left his employment with the Department of Public Health prior to the effective date of Section 36-25-13, Mr. Holman's activities will be governed by prior Section 36-25-13 which states as follows:

"(a) No former state official or employee shall serve for a fee as a lobbyist or represent clients before the body of which he is a former member or employee for a period of three years after he leaves such membership or employment, unless notice of such representation is given within five days after such appearance to the state ethics commission in the manner prescribed by the commission.

(b) No former public official or employee shall enter into a contract with any governmental agencies unless within five days of entering into said contract notice is filed with the commission of his previous status as a public official or employee and a copy of the contract provided."

As can be seen, the prior Section 36-25-13 which remains effective until June 19, 1996, prohibits a public employee or public official from lobbying or contracting with their former

employer for three years after leaving the public employment, unless they within five days of engaging in these activities, notify the Ethics Commission in writing.

Further, based on the above applicable Code Sections, Mr. Holman is not prohibited from accepting the private employment, nor is he prohibited by any of the other restrictive language of revised Section 36-25-13.

Question No. 2 requiring the registration as a lobbyist:

If Act No. 95-194 is applicable to Mr. Holman, will said Act prohibit or require registration as a lobbyist with respect to any of the following proposed activities?

As has been previously stated the revised portion of Section 36-25-13 effective June 19, 1996 has no application to Mr. Holman as his public employment was terminated prior to the effective date of that Section.

However, based on subsequent conversations and some confusion as to the nature of the questions, Question No. 2, (a) through (f) will be addressed as relates to the specific activities involved.

Section 36-25-1(17) defines lobbying as:

"(17) LOBBYING. The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body; provided, however, that providing public testimony before a legislative body or regulatory body or any committee thereof shall not be deemed lobbying."

Section 36-25-1(18)(a) defines a lobbyist as:

"(18) LOBBYIST.

a. The term lobbyist includes any of the following:

1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.

2. *A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.*
3. *A person who expends in excess of one hundred dollars (\$100) for a thing of value, not including funds expended for travel, subsistence expenses, and literature, buttons, stickers, publications, or other acts of free speech, during a calendar year to lobby.*
4. *A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.*
5. *An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session."*

Section 36-25-1(18)(b) states that a lobbyist is not any of the following:

" b. The term lobbyist does not include any of the following:

1. *A member of a legislative body on a matter which involves that person's official duties.*
2. *A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.*
3. *Reporters and editors while pursuing normal reportorial and editorial duties.*
4. *Any citizen not expending funds as set out above in paragraph a.3. or not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a particular issue or on particular legislation, or for the purpose of influencing legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.*
5. *A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.*
6. *A person whose primary duties or responsibilities do not include lobbying, but who*

may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess."

It should be pointed out that for the areas where Mr. Holman is engaged in lobbying activities he must register under the amended Alabama Ethics Law which requires registration by no later than January 31 of each calendar year, or within ten days after the first undertaking requiring such registration, i.e., within ten days after lobbying activities begin.

Question No. 2(a) requesting information from the department and other agencies:

Mr. Holman may be asked by his employer to request information from the Department of Health, the Division, or other agencies of the State concerning existing and proposed policies, rules, regulations, or legislation that effect Alabama ACEP and its members.

The definition of lobbyist does not include a person who is merely requesting information from a state department regarding existed or proposed policies. Therefore, Mr. Holman will not have to register as a lobbyist prior to requesting information from the Department of Health.

Question No. 2(b) discussing interpretations of legislation and administrative pronouncements:

Mr. Holman may be asked by his employer to discuss with the Department of Health, the Division, or other agencies of the State various interpretations of existing and proposed policies, rules, regulations, or legislation that effect Alabama ACEP and its members.

Section 36-25-1(18)(b)(2) states that a person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, etc. is not lobbying, where those professional services are not otherwise connected with legislative, executive, or regulatory action.

Requesting information from a department and discussing interpretation of legislation and administrative pronouncements clearly does not fall within the definition of lobbying, and therefore, Mr. Holman would not have to register to engage in this activity.

Question No. 2(c) assisting member(s) of the committee or the board:

Mr. Holman may be asked by his employer to provide assistance (example; gathering data, presenting factual reports, providing opinions on various issues, etc. to the Alabama ACEP

member or another member of the committee or the advisory board, or directly to the committee or the advisory board with respect to the committees or the boards policy making functions regarding the Department of Health, the Division, or other agencies of the State regarding existing and proposed policies, rules, regulations, or legislation effecting Alabama ACEP and its members).

As previously stated, Section 36-25-1(18)(b)(2) provides that this activity is not considered lobbying as it is merely advisory in nature; therefore, for Mr. Holman to engage in the activities contemplated by Question No. 2(c) would not require his registering as a lobbyist.

Question No. 2(d) appearing before the Department of Health on behalf of an Alabama ACEP physician:

Mr. Holman may be asked by his employer to appear before the Department of Health on behalf of an Alabama ACEP member, i.e., an Emergency Physician.

Should Mr. Holman, while appearing on behalf of an Emergency Physician, be attempting to influence the enactment, promulgation, modification, or deletion of regulations before the Department of Public Health, he would be considered lobbying and would be required to register as a lobbyist.

Should Mr. Holman be appearing for the Department on a matter that does not effect or involve the change of rules or regulations of the Department, he would not be lobbying; and likewise, not be required to register as a lobbyist.

Question No. 2(e) suggesting changes to legislation and administrative pronouncements:

Mr. Holman may be asked by his employer to discuss with the Department of Health, the Division, or other agencies of the State possible changes in existing and proposed policies, rules, regulations, or legislation that affect Alabama ACEP and its members. Such changes could include a recommendation that the Basic Trauma Life Support Course and related publications become required under the Departments continuing education program for Emergency Medical Technicians and Paramedics.

As has previously been stated, Section 36-25-1(18)(b)(2) exempts from the definition a lobbyist, a person or attorney who is rendering professional services in drafting bills, or in advising clients, and in rendering opinions as to the construction and effect of proposed or pending legislation, etc.

By the same token, this Section extends that exemption only to the extent that those

professional services are not otherwise connected with legislative, executive, or regulatory action.

In suggesting changes to legislation and administrative pronouncements, Mr. Holman would not be lobbying and would therefore not be required to register as a lobbyist. By the same token, should his activities extend to attempting to influence the change of regulations which would require continuing education programs for Emergency Medical Technicians and Paramedics, Mr. Holman would be a lobbyist and required to register.

Question No. 2(f) suggesting changes to legislation directly to legislators:

Mr. Holman may be asked by his employer to suggest directly to legislators or to legislative bodies in a public forum, changes to existing and proposed legislation that affect Alabama AECP and its members.

Section 36-25-1(18)(b)(4) excludes from the definition of a lobbyist, any citizen not expending funds . . . or not lobbying for compensation who contacts a member of a legislative body or gives public testimony on a particular issue, or on particular legislation, or for the purpose of influencing legislation, and who is merely exercising his or her constitutional right to communicate with members of a legislative body.

By the same token, Section 36-25-1(18)(a)(1) & (2) define a lobbyist as a person who receives compensation or reimbursement from another person, group, or entity to lobby, and a person who lobbies as a regular and usual part of employment whether or not any compensation in addition to his regular salary and benefits is received.

From the facts as provided, it would appear that Mr. Holman would be communicating with the legislators as a regular and usual part of his employment with Alabama ACEP. Because a regular and usual part of his employment, would consist of communicating with the legislators regarding proposed legislation and matters that effect Alabama ACEP, Mr. Holman would be required to register as a lobbyist.

Question No. 3 representing employer before the department :

It is somewhat unclear why Section 36-25-13, Code of Alabama, 1975 (effective June 19, 1996) would bar Mr. Holman from representing his employer subsequent to June 19, 1996 as his private employment began prior to the effective date of that Section; i.e., subsequent to the effective date of revised Section 36-25-13, **may Mr. Holman represent his employer before the Department of Public Health, or is he barred by the two year revolving door?**

Section 36-25-13(b) states:

"(b) No former public official or employee shall enter into a contract with any governmental agencies unless within five days of entering into said contract notice is filed with the commission of his previous status as a public official or employee and a copy of the contract provided."

As the Section is effective June 19, 1996, any public employee leaving his public employment subsequent to June 19, 1996 is barred by the two year revolving door provision of the revised law.

By the same token, a public employee who leaves his public employment prior to June 19, 1996 does not fall under the provisions of the revised Section, and is therefore not barred by the two year revolving door.

Based on the facts as provided, J. Leland Holman is not covered by revised Section 36-25-13 (effective June 19, 1996), nor the two year revolving door limitation provided therein.

At the same time, for the period prior to June 19, 1996, Mr. Holman is barred for a period of three years from representing his employer before his former employer, or contracting with that employer unless he notifies the Ethics Commission within five days of undertaking that activity.

Irrespective of the effective date of Section 36-25-13, which relates to what an individual may and may not do before a former employer, anyone engaging in lobbying activities must register as a lobbyist no later than January 31 of each calendar year or within ten days after the first undertaking requiring such registration as per Section 36-25-18(a).

Likewise, Section 36-25-19(a) requires that registered lobbyists file quarterly reports with the Ethics Commission no later than January 31, April 30, July 31, and October 31 for each preceding calendar quarter setting forth their lobbying activities.

CONCLUSION

Subsequent to June 19, 1996 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.

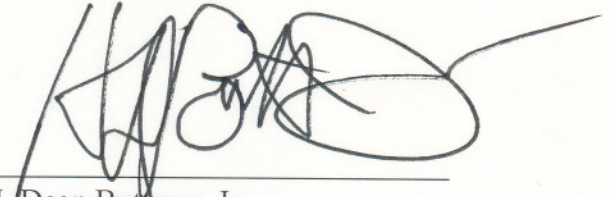
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Subsequent to June 19, 1996 no public employee shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, or department of which he or she is a former employee for a period of two years after he or she leaves such employment.

A public official or public employee who leaves public employment prior to June 19, 1996 is not barred by the provisions of Section 36-25-13 and may seek employment with a business, corporation, or partnership that he personally participated in the direct regulation of; provided however, that should the public employee lobby before, or contract with the former employer, he may not do so for a period of three years after leaving the public employment, unless he notifies the Ethics Commission of these activities within five days of undertaking them.

AUTHORITY

By 4 - 0 vote of the Alabama Ethics Commission on April 17, 1996.

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