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May 1, 1996

ADVISORY OPINION NO. 96-50

Mr. Stanley L. Graves
President
Graco Resources, Inc.
2500 Acton Road
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Birmingham, Alabama 35243

Conflict Of Interest/ Former
Member Of The Alabama
Environmental Management
Commission Operating A
Drilling And Consulting
Company Subsequent To His
Service On The Commission.

Revolving Door/ Members
Of The Alabama
Environmental Management
Commission Representing
Clients Before The
Commission Once Their
Terms Expire.

A former member of the
Alabama Environmental
Management Commission,
who is the owner of a drilling
company and consulting
practice, may continue to
operate his drilling company
and consulting practice,
subsequent to his service on
the Alabama Environmental
Management Commission.

Subsequent to June 19, 1996, the owner of a drilling company and consulting practice may not represent that company or clients of that company, before the Alabama Environmental Management Commission for a period of two years after he retires from service on the Commission.

Subsequent to June 19, 1996, 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 that membership.

Subsequent to June 19, 1996, a former member of the Alabama Environmental Management Commission may not represent clients including his own business before the Environmental Management Commission or the Alabama Department of Environmental Management for a period of two years after his service on the Commission is completed.

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Dear Mr. Graves:

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 the owner of a drilling company and consulting practice who is a member of the Alabama Environmental Management Commission continue to operate the drilling company and consulting practice subsequent to his retirement on the Commission as long as he does not represent a client before the Commission?

FACTS AND ANALYSIS

Stanley L. Graves is the President of Graco Resources, Inc. He is a drilling contractor and ground water consultant within the State of Alabama. His company is licensed by the Alabama Department of Environmental Management required by Section 33-9-1, Code of Alabama, 1975.

The Alabama Environmental Management Commission is established by Section 22-22A-6, Code of Alabama, 1975. The Commission is responsible for selecting a Director of ADEM, and advising the Director on environmental matters, establishing, adopting, promulgating, modifying, rules, regulations, and environmental standards for ADEM, developing environmental policies for the State of Alabama, and hearing and determining appeals of administrative actions. Based on this fact, it would appear that the Environmental Management Commission is the oversight agency for ADEM.

On occasion, Mr. Graves may communicate with a staff person regarding a specific project; however, in over thirteen years of service on the Alabama Environmental Management Commission, no cases involving his drilling company or himself have ever come before the Commission. On the few occasions that an issue involving a client has come before the Commission, he has always recused himself. His term on the Alabama Environmental Management Commission expires on October 1, 1996, and he does not plan to ask Governor James for re-appointment.

In subsequent information obtained from Mr. Graves, Mr. Graves has stated that he does not now, nor has he ever represented a client before the Alabama Environmental Management Commission. However, as the sole principal owner of Graco Resources, Inc., he occasionally

works for clients with ground water problems which require interfacing with staff members of the Department, but not the Alabama Environmental Management Commission itself.

Mr. Graves has no intention of representing a client before the Commission, nor does he think anyone but a licensed attorney may do so.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-13(d) states:

"(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."

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."

Subsequent to June 19, 1996, a person who has served as a member of a board or commission may not represent a client that he personally participated in the direct regulation of, before that board, commission, or department for a period of two years after he leaves service with that public entity.

Notwithstanding the above, the question posed to the Ethics Commission is whether or not Mr. Graves may continue to operate a drilling company and consulting practice after he leaves his service with the Alabama Environmental Management Commission.

As has been previously stated, Mr. Graves has not in the past, nor does he anticipate in the future representing clients before the Commission. However, his business responsibilities may involve interfacing with certain staff members of the Alabama Department of Environmental Management or the Alabama Environmental Management Commission.

There is nothing in the Alabama Ethics Law that would prohibit Mr. Graves from discussing and interfacing with employees of ADEM or AEMC. The sole prohibition would be

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Mr. Graves representing either Graco or another client before the Commission or ADEM for a period of two years after his board service is finished, should it be finished subsequent to June 19, 1996. Therefore, Mr. Graves is not prohibited from continuing his business activities with Graco as set out in the request for an advisory opinion.

CONCLUSION

A former member of the Alabama Environmental Management Commission, who is the owner of a drilling company and consulting practice, may continue to operate his drilling company and consulting practice, subsequent to his service on the Alabama Environmental Management Commission, should such service end subsequent to June 19, 1996.

Subsequent to June 19, 1996, the owner of a drilling company and consulting practice may not represent that company or clients of that company, before the Alabama Environmental Management Commission for a period of two years after he retires from service on the Commission.

Subsequent to June 19, 1996, 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 that membership.

Subsequent to June 19, 1996, a former member of the Alabama Environmental Management Commission may not represent clients including his own business before the Environmental Management Commission or the Alabama Department of Environmental Management for a period of two years after his service on the Commission is completed.

AUTHORITY

By 4 - 1 vote of the Alabama Ethics Commission on May 1, 1996.



H. Dean Buttram, Jr.
Chair
Alabama Ethics Commission