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June 5, 1996

ADVISORY OPINION NO. 96-52

Willie D. Larkin, Ph.D.
Extension Community Development Specialist
& Assistant Professor in Vocational & Adult Education
The Alabama Cooperative Extension Service
State Headquarters/CRD Specialists
Auburn University, Alabama 36849-5631

Conflict Of Interests/Public
Employee Starting Outside
Consulting Business.

A public employee may not begin and may not operate a speaking and consulting business in addition to his public office where his job responsibilities are of a similar nature to his speaking and consulting business, and in addition where he provides Extension Services Statewide.

A public employee is not prohibited from operating and maintaining a speaking and consulting business in addition to his public office, so long as he does not operate the speaking and consulting business within the State of Alabama.

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Dear Dr. Larkin:

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 State Extension Specialist with the Cooperative Extension Service at Auburn University, who is also an Assistant Professor with the Department of Vocational and Adult Education at Auburn University, start a speaking and consulting business in addition to his position with Auburn University?

FACTS AND ANALYSIS

Willie D. Larkin, Ph.D. is employed as Extension Specialist with the Alabama Cooperative Extension Services at Auburn University, and also serves as an Assistant Professor with the Vocational and Adult Education Department. He is interested in conducting motivational and personal development speeches, workshops, and seminars during his spare time. He anticipates performing these workshops, seminars, and speeches while on annual leave, vacation days, weekends, and evenings.

The subject matter of the speaking and consulting businesses consist of Conflict Management, Valuing Differences and Diversity Management in the Workplace, Keys to Customer Service Excellence, Mastering Mind Over Matter, and Striving For Excellence.

He anticipates presenting these seminars to such organizations as the Alabama State Personnel department, the State Department of Human Resources, various State Associations, such as AEA, Cattleman's Association, Commission on Aging, etc., private for-profit businesses, and Head Start Programs. He is concerned that he not create a conflict of interest between his private employment and his public employment.

In his responsibilities with the Auburn University Extension Services, Mr. Larkin teaches Leadership and Organizational Effectiveness to various community groups. He also works in the field of Economic and Community Development.

In additional information provided to the Ethics Commission, Mr. Larkin has been told

that part of his job is to inspire and motivate, in addition his work through the Extension Service is done Statewide.

On December 6, 1995, the Ethics Commission adopted Advisory Opinion No. 95-113 which set out certain guidelines whereby a public employee could accept outside employment. In that opinion, the Ethics Commission held that a public employee may accept outside employment provided that there is no use of public time, labor, equipment, materials, that the public employee or official did not use his or her position to obtain the employment, and if the secondary employment does not conflict with the public employment. In his request for an opinion, Dr. Larkin has stated that he will not utilize materials or resources at Auburn University or materials and resources that belong to Auburn University, and further that he has an office in his home with all the necessary equipment for establishing his consulting business.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-2(b) states:

"(b) It is also essential to the proper operation of government that those best qualified be encouraged to serve in government. Accordingly, legal safeguards against conflicts of interest shall be so designed as not to unnecessarily or unreasonably impede the service of those men and women who are elected or appointed to do so. 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 36-25-5(c) states:

"(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."

Section 36-25-1(24) states:

"(24) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is

paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

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, there would exist a conflict of interest for a State Extension Specialist with the Alabama Cooperative Extension Service at Auburn University, who also serves as an Assistant Professor with the Department of Vocational and Adult Education, to establish and operate a speaking and consulting business due to the fact that the responsibilities of his public employment are so closely related to his proposed outside employment.

At the same time; however, the public employee is not prohibited from operating a speaking and consulting business outside of the State of Alabama.

CONCLUSION

A public employee may not begin and may not operate a speaking and consulting business in addition to his public office where his job responsibilities are of a similar nature to his speaking and consulting business, and in addition where he provides Extension Services Statewide.

A public employee is not prohibited from operating and maintaining a speaking and consulting business in addition to his public office, so long as he does not operate the speaking and consulting business within the State of Alabama.

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AUTHORITY

By 4 - 0 vote of the Alabama Ethics Commission on June 5, 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