



H. Dean Buttram, Jr., Esq. Chairman
James T. Pursell, Vice-Chairman
Henry B. Gray III
Camille S. Butrus
Helen Shores Lee, Esq.

STATE OF ALABAMA ETHICS COMMISSION

MAILING ADDRESS

P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS

RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104



E. J. (Mac) McArthur
Director

TELEPHONE (334) 242-2997
FAX (334) 242-0248

June 5, 1996

ADVISORY OPINION NO. 96-56

Mr. E. J. "Mac" McArthur
Director
Alabama Ethics Commission
Post Office Box 4840
Montgomery, Alabama 36103-4840

Revolving Door/Members Of
The Environmental
Management Commission
Representing Clients Before
The Commission Once Their
Term Expires.

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
Commission may not
personally 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.

The prohibition contained in Section 36-25-13 does not extend to an employee or co-worker of the former board member, but is strictly limited to the former board member; provided however, that the former board member not participate in the representation, nor attempt to influence its outcome.

Dear Mr. McArthur:

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

Do the prohibitions contained in Section 36-25-13 which prohibit a former member of a board, agency, commission, department, or legislative body from representing clients before that body for a period of two years after leaving such service extend to employees and co-workers of the former public official?

FACTS AND ANALYSIS

Since the Alabama Ethics Law as amended went into effect in October of 1995, there has been much concern and confusion about the prohibition contained in Section 36-25-13 which goes into effect June 19, 1996.

Section 36-25-13 provides as follows:

"(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."

On May 1, 1996, the Alabama Ethics Commission adopted Advisory Opinions 96-49 and 96-50 which related to whether or not a former board member could represent his business before ADEM subsequent to his service on the board. During discussion of the opinions, the question was raised as to whether or not this prohibition extended to employees and co-workers of the former public official; therefore, this opinion was requested.

The board of ADEM requires that certain individuals serve as members. For example, one member must be an attorney, one member must be a medical doctor, one member must be a civil engineer, etc. While it is obvious, for example, that the attorney serving on the board may not represent clients for two years after his service is ended, it is not so clear as to whether or not associates or other members of his law firm are prohibited from doing so. Likewise, it is clear that a civil engineer who serves on the board of ADEM may not represent his business, or clients of his business, before ADEM for a period of two years, after his service ends, it is, again, not clear as to whether or not this prohibition extends to employees of his firm.

One of the purposes of Section 36-25-13 is to prevent a former member of a regulatory body from receiving undo benefit or exerting undo influence over the board on behalf of a client once his service on that board is ended.

For example, an attorney or civil engineer who has formerly sat as a member of ADEM's board would be in a position to possibly receive a more favorable treatment on behalf of his clients with the board, due to the fact that he has previously served with the sitting members; thereby, giving his or her client a benefit that they would not ordinarily receive.

Section 36-25-13(a) prohibits a public official from serving for a fee as a lobbyist or otherwise representing clients, including their employer before the body on which they formerly sat. There is no mention of employees or associates of the former public official representing clients before that body.

Likewise, Section 36-25-13(b) prohibits a public employee from serving for a fee as a lobbyist or representing clients, including his or her employer, before the body of which they were formerly employed. Again, there is no mention of co-workers and/or the former public employee's current employer.

Based on the above, Section 36-25-13 does not prohibit an employee or associate of a former member of a regulatory body from representing clients before that body, but strictly limits the former public official or public employee who sat on or was employed by the body from doing so.

Therefore, a civil engineer's firm is not prohibited from representing clients before ADEM, but merely the former board member **himself**, and that board member is prohibited from representing clients before ADEM for a period of two years.

Likewise, an attorney who has formerly sat on the ADEM board's law firm, its employees, and associates are not restricted from representing clients before ADEM. **The prohibition extends merely to the former board member himself.**

CONCLUSION

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 Commission may not personally 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.

The prohibition contained in Section 36-25-13 does not extend to an employee or co-worker of the former board member, but is strictly limited to the former board member; provided however, that the former board member not participate in the representation, nor attempt to influence its outcome.

E. J. "Mac" McArthur
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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