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ADVISORY OPINION NO. 96-63

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Statement Of Economic
Interests/Members Of Boards
Having Statewide
Jurisdiction.

Conflict Of Interests/Member
Of Board Having Statewide
Jurisdiction Obtaining Or
Maintaining Professional
Services Contracts With State
Or Local Governments.

Contracts Paid Out Of
Government Funds/Contracts
Paid Out Of Government
Funds Required To Be Filed
With The Alabama Ethics
Commission.

Members of the Alabama
Surface Mining Commission
being members of a board
having statewide jurisdiction,
and not being solely advisory
in nature, are required to file

Statements of Economic Interests with the Alabama Ethics Commission pursuant to Section 36-25-14(a)(4).

Members of the Alabama Surface Mining Commission may obtain and maintain professional services contracts with the State and local governments that are not obtained through competitive bidding, but may not use their position as a board member to obtain or influence the awarding of the contract, nor may they obtain professional services contracts with the Alabama Surface Mining Commission.

A copy of each contract regardless of the amount entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the Commission within ten days after the contract has been entered into.

For contracts entered into prior to the effective date of the amended Ethics Law, Section 36-25-11 requires that such contract be filed

G. Milton McCarthy
Advisory Opinion No. 96-63
Page three

with the Ethics Commission, but does not include the ten day filing period.

As Title 41 is beyond the scope of the Alabama Ethics Law, the Ethics Commission would suggest that the requestor of this opinion contact the Attorney General's Office for matters relating to the competitive bid laws, and its various prohibitions.

Dear Mr. McCarthy:

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.

QUESTIONS PRESENTED

1. Are the Alabama Surface Mining Commission members required to file Statements of Economic Interests merely by virtue of them being members of a commission having statewide jurisdiction pursuant to Section 36-25-14(a)(4), Code of Alabama, 1975?

2(a). Does Section 36-25-11, Code of Alabama, 1975 or any other pertinent provisions of law prohibit a Commissioner from obtaining or maintaining any contracts to provide professional services (e.g. legal services) to the State or local governments that was not obtained through a competitive bid process?

2(b). Assuming the answer to Question No. 2(a) is no, do the provisions of the last sentence of Section 36-25-11, Code of Alabama, 1975 or any other provision of law require that any such professional service contracts be filed with the Ethics Commission, and if so, what application does this provision have to contracts entered into prior to the effective date of the amended Ethics Act?

FACTS AND ANALYSIS

^ The power and authority for carrying out the provisions of the Alabama Surface Mining Control and Reclamation Act of 1981 is vested by law in seven citizens who are appointed by the Governor, with the advice and consent of the State Senate. Like other state boards and commissions, they meet monthly to transact their business, hear the reports of, and review the work of the Commission Director and staff. Special meetings are convened when necessary. From the facts as presented, the Alabama Surface Mining Commission is a Commission having statewide jurisdiction, and is not solely advisory in nature.

Based on the amended Ethics Act, General Counsel for the Commission has requested this opinion.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-14(a)(4) states:

"(a) A statement of economic interests shall be completed and filed in accordance with this chapter with the commission no later than April 30 of each year covering the period of the preceding calendar year by each of the following:

(4) Members of the Alabama Ethics Commission; appointed members of boards and commissions having statewide jurisdiction (but excluding members of solely advisory boards)."

Section 36-25-11 states:

*"Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. **A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into.**"*

Section 36-25-14(a)(4) requires that members of the Alabama Ethics Commission as well as appointed members of boards and commissions having statewide jurisdiction, but excluding

members of solely advisory boards, file a Statement of Economic Interests for the preceding calendar year, no later than April 30, of each year with the Alabama Ethics Commission.

Based on the facts as presented, the Alabama Surface Mining Commission is a board having statewide jurisdiction, and is not merely advisory in nature, therefore, its members are required to file Statements of Economic Interests with the Ethics Commission.

Question Number Two of the request for an advisory opinion is broken down into two parts which will be addressed separately.

Section 36-25-11, Code of Alabama, 1975, provides that unless exempt to the competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services that is to be paid in whole or in part out of state, county, or municipal funds, unless the contract has been awarded through a process of competitive bidding.

Title 41, Code of Alabama, governs the regulations concerning competitive bid laws in the State of Alabama. As a general rule, professional services are exempt from competitive bidding, therefore, if the services provided by a Commission member to a State or local governmental agency are professional in nature, such as legal services, they are exempt from the competitive bid law.

While members of the Alabama Surface Mining Commission may obtain and maintain professional services contracts they may not enter into contracts for professional services with the Alabama Surface Mining Commission.

Question Number 2(b) relates to the filing of professional services contracts with the Alabama Ethics Commission. Section 36-25-11 states ". . . a copy of each contract regardless of the amount entered into by a public official, public employee, a member of the household of a public official or a public employee, and any business with which the person is associated shall be filed with the Commission within ten days after the contract has been entered into."

Based on the above language, regardless of whether or not the contract is competitively bid, a copy of such contract must be filed with the Ethics Commission within ten days of its execution.

For contracts entered into prior to the effective date of the amended Ethics Law, Section 36-25-11 requires that such contract be filed with the Ethics Commission, but does not include the ten day filing period.

CONCLUSION

Members of the Alabama Surface Mining Commission being members of a board having statewide jurisdiction, and not being solely advisory in nature, are required to file Statements of Economic Interests with the Alabama Ethics Commission pursuant to Section 36-25-14(a)(4).

Members of the Alabama Surface Mining Commission may obtain and maintain professional services contracts with the State and local governments that are not obtained through competitive bidding, but may not use their position as a board member to obtain or influence the awarding of the contract, nor may they obtain professional services contracts with the Alabama Surface Mining Commission.

A copy of each contract regardless of the amount entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the Commission within ten days after the contract has been entered into.

For contracts entered into prior to the effective date of the amended Ethics Law, Section 36-25-11 requires that such contract be filed with the Ethics Commission, but does not include the ten day filing period.

As Title 41 is beyond the scope of the Alabama Ethics Law, the Ethics Commission would suggest that the requestor of this opinion contact the Attorney General's Office for matters relating to the competitive bid laws, and its various prohibitions.

AUTHORITY

By 4 - 0 vote of the Alabama Ethics Commission on June 5, 1996.



H. Dean Buttram, Jr.
Chair
Alabama Ethics Commission