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ADVISORY OPINION NO. 97-107

Tonya T. Cannon
State Professional Trainee
Alabama State Banking Department
3847 Rouse Ridge Road
Montgomery, Alabama 36111

Revolving Door/Former Employee Of Alabama State Banking Department Accepting Employment With A Subsidiary Of A Bank She Has Audited.

A former State Professional Trainee with the Alabama State Banking Department may not, for a period of two years, accept employment with a financial institution or a subsidiary of that financial institution when she has personally participated in an examination of a bank that is also a subsidiary of that financial institution.

Dear Ms. Cannon:

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 former State Professional Trainee with the Alabama State Banking Department accept employment with a holding company that is a part of the parent company or a subsidiary of a financial institution when she has personally participated in an examination of a bank that is also a subsidiary of that financial institution?

FACTS AND ANALYSIS

Tonya T. Cannon is a State Professional Trainee with the Alabama State Banking Department. She is interested in accepting employment with Regions Financial Corporation. She has recently been involved in an examination of Regions Bank, a subsidiary of Regions Financial Corporation.

Her duties as a trainee for the Banking Department require her to perform various functions with regard to examinations. She performs different tasks at each bank along with a team of other examiners. One examiner is designated as Examiner-In-Charge (EIC) and has discretion over what is included in the report when it is submitted for review. The EIC discusses the findings of the examination with bank executives before leaving the bank. Everything in the report is subject to review by a Review Examiner in the office.

In June of 1997, Ms. Cannon participated in the Joint Alabama Banking Department/ Federal Deposit Insurance Corporation Examination of Regions Bank. In a joint examination, one State Examiner and one Federal Examiner are designated as EICs. Ms. Cannon was a member of the examination team, but was not an EIC. Her duties were limited to reconciling several of the bank's investment bond accounts and evaluation of the bank's exposure to interest rate risks. Other than the holding company representative who coordinated information and meeting times for the examiners with bank personnel, she had contact only with bank personnel.

The position she is interested in is with the holding company in the Audit Department; specifically, the audit team involved with another Regions subsidiary, Regions Mortgage, Inc., and not Regions Bank.

Ms. Cannon states that she had no direct contact with either the Audit Department or Regions Mortgage, Inc., during the examination. As a learning experience, she sat in on a meeting with an FDIC Examiner and a Regions Mortgage, Inc. employee as they discussed Regions Mortgage's use of off-balance sheet hedging instruments, but she had no comments or bearing on the meeting, as she states they were only examining the bank, not the holding company subsidiaries.

Ms. Cannon further states that in relation to the position she is seeking, Regions Mortgage, Inc. is the company which she will be auditing and it has no participation in the hiring practices of the Audit Department for the holding company.

She reiterates that her involvement in the examination of Regions Bank was limited in scope regarding the bank and in no way involved the regulation of Regions Financial Corporation or Regions Mortgage, Inc.

The Alabama Ethics Law, Code of Alabama, 1975, 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."

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."

On numerous occasions the Alabama Ethics Commission has addressed the situation whereby a State employee, who has personally participated in the regulation of a private entity, has desired to seek employment with that entity after they personally participated in the regulation of that entity.

In the facts before the Commission at this time, the requestor of the opinion is interested in going to work for the parent company, Regions Financial Corporation of a subsidiary, Regions Bank, when she has been involved in an examination of that subsidiary.

The "Revolving Door" section of the Alabama Ethics Law could easily be circumvented if an individual was allowed to go to work for a subsidiary or another branch of the entity. While they may not have personally participated in the direct regulation, audit or investigation of that branch or subsidiary, what impacts on that subsidiary or branch, impacts on the entire company and what impacts on a subsidiary impacts on the parent company. For example, it would circumvent the Ethics Law for an individual, who audited or investigated an *XYZ* bank branch in Dothan, Alabama, to go to work for an *XYZ* branch located in Huntsville, Alabama, as they are both branches of the same entity. Likewise is the situation with subsidiaries.

While her involvement was not directly with Regions Financial Corporation, because of the fact that Regions Mortgage and Regions Bank are both subsidiaries of Regions Financial Corporation, the "Revolving Door Statute" of the Alabama Ethics Law would apply.

Based on the facts as presented and the above law, a State Professional Trainee with the Alabama Banking Department may not, for a period of two years, go to work for Regions Financial Corporation since Regions Financial Corporation is the parent company of a bank in which she has personally been involved in the examination of.

CONCLUSION

A former State Professional Trainee with the Alabama State Banking Department may not, for a period of two years, accept employment with a financial institution or a subsidiary of that financial institution when she has personally participated in an examination of a bank that is also a subsidiary of that financial institution.

AUTHORITY

By 4 - 0 vote of the Alabama Ethics Commission on December 10, 1997.

Henry B. Gray III

Henry B. Gray, III
Chair
Alabama Ethics Commission