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October 1, 1997

ADVISORY OPINION NO. 97-83

Cynthia Perry Isaac
701 Dosford Road
Montgomery, Alabama 36116-5408

Conflict Of Interests/Employee Of The Department Of Mental Health/Mental Retardation Providing Consulting Services To The Department Of Transportation And Teaching Course At State Institution.

A Mental Health Specialist II with the Department of Mental Health/Mental Retardation may provide consulting services through a private company to the Department of Transportation to provide race relations training for DOT employees; provided, that she not use her position as a Mental Health Specialist II with the Department of Mental Health/Mental Retardation to obtain the outside employment; that all work concerning the secondary employment be done on her own time, whether it be after hours or while on annual leave; that there be no use of public equipment, facilities, time, materials, human labor, or other public property under her discretion or control to assist her in performing the secondary employment; and provided further, that the consulting work is not part of her normal job responsibilities with the Department of Mental Health/Mental Retardation.

Conflict Of Interests/Employee With The
Department Of Mental Health/Mental
Retardation Serving As Adjunct Professor
Or Instructor At A State University.

A Mental Health Specialist II with the
Department of Mental Health/Mental
Retardation may serve as an adjunct
professor or instructor at a State University;
provided, that she not use her position as a
Mental Health Specialist II with the
Department of Mental Health/Mental
Retardation to obtain the outside
employment; that all work concerning the
secondary employment be done on her own
time, whether it be after hours or while on
annual leave; that there be no use of public
equipment, facilities, time, materials, human
labor, or other public property under her
discretion or control in her primary
employment to assist her in performing the
secondary employment; and provided
further, that the work is not part of her
normal job responsibilities with the
Department of Mental Health/Mental
Retardation.

Dear Ms. Isaac:

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). May a Mental Health Specialist II with the Department of Mental Health/Mental Retardation accept secondary employment as a consultant for a private consulting company contracting with the Department of Transportation to provide race relations training for DOT employees?

(2). May a Mental Health Specialist II with the Department of Mental Health/Mental Retardation accept secondary employment as an adjunct professor or instructor at a State

FACTS AND ANALYSIS

Cynthia Perry Isaac has been employed with the Department of Mental Health, Community Programs as a Mental Health Specialist II since July 9, 1989. She has been offered a job as a consultant for *Design for Life Enrichment Workshops* (DFLEW), a consulting company managed by Duke Ridolphi. The firm was awarded a contract by the Department of Transportation to provide Race Relations Training for their employees. If she is able to accept the secondary employment to work with DFLEW, Ms. Isaac understands that she must work with them while on personal leave or on weekends.

All money under the contract would be paid with State funds to the consulting firm, a private business, which in turn would pay Ms. Isaac for her services. She asked if there would be a conflict of interest to accept payment for work performed while on leave from another State agency, even though those services are provided through a private consulting firm.

In addition, Ms. Isaac is considering working as an adjunct professor or instructor at a State University in the Montgomery area. She has asked for an Advisory Opinion on the above scenarios.

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 36-25-1(8) states:

"(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs."

Section 36-25-2(a)(3) states:

"(a) The Legislature hereby finds and declares:

(3) No public office should be used for private gain other than the remuneration provided by law."

Section 36-25-2(b) in pertinent part states:

"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(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 36-25-5(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."

Based on the facts as presented and the above law, it would not present a conflict of interests for a Mental Health Specialist II with the Department of Mental Health/Mental Retardation to provide consulting services for a private business contracting with the Department of Transportation; provided:

(1). That she not use her position as a Mental Health Specialist II with the Department of Mental Health/Mental Retardation to obtain the outside employment;

(2). That all work concerning the secondary employment be done on her own time, whether it be after hours or while on annual leave;

(3). That there be no use of public equipment, facilities, time, materials, human labor, or other public property under her discretion or control in her primary employment to assist her in performing the secondary employment; and provided further,

(4). That the consulting work is not part of her normal job responsibilities with the Department of Mental Health/Mental Retardation.

In addition, a Mental Health Specialist II with the Department of Mental Health/Mental Retardation may accept work as an adjunct professor or instructor at a State University; provided, the above conditions are also met.

CONCLUSION

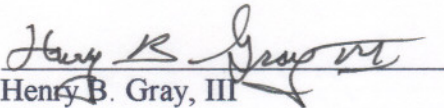
A Mental Health Specialist II with the Department of Mental Health/Mental Retardation may provide consulting services through a private company to the Department of Transportation to provide race relations training for DOT employees; provided, that she not use her position as a Mental Health Specialist II with the Department of Mental Health/Mental Retardation to obtain the outside employment; that all work concerning the secondary employment be done on her own time, whether it be after hours or while on annual leave; that there be no use of public equipment, facilities, time, materials, human labor, or other public property under her discretion or control to assist her in performing the secondary employment; and provided further, that the consulting work is not part of her normal job responsibilities with the Department of Mental Health/Mental Retardation.

A Mental Health Specialist II with the Department of Mental Health/Mental Retardation may serve as an adjunct professor or instructor at a State University; provided, that she not use her position as a Mental Health Specialist II with the Department of Mental Health/Mental Retardation to obtain the outside employment; that all work concerning the secondary employment be done on her own time, whether it be after hours or while on annual leave; that there be no use of public equipment, facilities, time, materials, human labor, or other public property under her discretion or control in her primary employment to assist her in performing the secondary employment; and provided further, that the work is not part of her normal job responsibilities with the Department of Mental Health/Mental Retardation.

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AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on October 1, 1997.



Henry B. Gray, III
Chair
Alabama Ethics Commission