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October 21, 1997

ADVISORY OPINION NO. 97-94

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George C. Marshall Space Flight Center
Marshall Space Flight Center, Alabama 35812

Conflict Of Interests/Federal Ethics Law
Pre-Empting State Ethics Law.

The Alabama Ethics Commission has no jurisdiction or authority to determine whether or not State Ethics Laws are pre-empted by Federal Ethics Laws.

An employee of the National Aeronautics and Space Administration, appointed to the Alabama Space Science Exhibit Commission by the Governor is a public official, and therefore, subject to the Alabama Ethics Law.

Conflict Of Interests/NASA Employee,
Appointed To The Alabama Space Science
Exhibit Commission, Participating In ASSEC
Matters Which Affect NASA's Interests.

A NASA employee, appointed to the Alabama Space Science Exhibit Commission, may participate in ASSEC matters which affect NASA's interests without violating the Alabama Ethics Law.

Dear Mr. Hicks:

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. Do the comprehensive Federal Ethics Statutes and Regulations pre-empt State Ethics Laws with regard to service performed by Ms. Griner in an official capacity for the Federal Government?
2. If Ms. Griner participates on the ASSEC in matters which affect NASA's interests, would the State view that as a conflict of interests?

FACTS AND ANALYSIS

The George C. Marshall Space Flight Center (MSFC) in Huntsville, Alabama is a major Field Center of the National Aeronautics and Space Administration (NASA). MSFC's Deputy Director, Ms. Carolyn Griner, was recently appointed to the Alabama Space Science Exhibit Commission (ASSEC) by Governor James.

The Alabama Space Science Exhibit Commission was established in 1965. The Commission provides for and participates in the management and control of facilities to house and display visual exhibits of space exploration made available by the National Aeronautics and Space Administration and promote the full dissemination of information on solar energy at the Energy and Information Exhibit Center.

The ASSEC has 18 members who are appointed by the Governor. At least three must be residents of Madison County, with the remaining members selected to provide general statewide representation on the Commission. Members must be knowledgeable and interested in national defense and space exploration and in the promotion of interests in such fields. There is no requirement that a NASA or MSFC employee serve on the board.

The ASSEC's primary function is to oversee the operation of the U.S. Space and Rocket Center in Huntsville. Pursuant to the ASSEC's enabling statute (Code of Alabama, 1975, Section 41-9-430 et seq.) and by agreement with MSFC, the U.S. Space and Rocket Center serves as an official NASA Visitor Center. The programs and operations of the U.S. Space and

Rocket Center are very important to MSFC, because NASA has a statutory obligation to "provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof." 42 U.S.C., Section 2473. Since the creation of the ASSEC in 1965, a senior MSFC official has traditionally served as a member of the ASSEC, beginning with Dr. Wernher von Braun, MSFC's first Center Director.

Following the appointment of Ms. Griner to the ASSEC to serve the unexpired term of former MSFC Center Director T. J. Lee, the Director of the Ethics Commission provided information to her concerning Alabama's Ethics Law. "Several MSFC Center Directors, going back to Dr. von Braun, have served on the ASSEC in their official capacity, and none were ever subjected to the Alabama Ethics Law."

General Counsel's office for the George C. Marshall Space Flight Center has reviewed that information and found that it raises a couple of significant questions with regard to Ms. Griner's service on the ASSEC. They have asked for an Advisory Opinion addressing the above referenced questions.

Ms. Griner is serving on the ASSEC in her official capacity as a NASA official, and as such, she is subject to a comprehensive set of Federal Ethics Laws and Regulations governing her activities. The standards of conduct for employees of the Executive Branch are found in the Code of Federal Regulations at C.F.R. part 2635. In addition to these regulatory requirements, 5 C.F.R., Section 2635.902 lists dozens of Federal Statutes that also govern the conduct of Federal officials. They believe that this comprehensive regulation of Ms. Griner's conduct in matters involving or reflecting on her actions as a Federal official pre-empts the application of State Ethics Laws in her case, since she is serving in her official Federal capacity.

The Office of General Counsel further believes a constitutional immunity attaches to any actions taken by Ms. Griner in the good faith performance of her official duties. If she were serving on the ASSEC in her private capacity, rather than as part of her official NASA duties, State Ethics Laws would apply to her. Since she is serving as part of her official duties, though, she should be considered immune from State Ethics enforcement.

General Counsel states that the Federal Ethics Laws and Regulations are more comprehensive and generally more restrictive than the Alabama Laws. Therefore, the pre-emption of the State Laws would not result in ethical loopholes that would permit Ms. Griner to misuse public office.

As relates to question one, the Alabama Ethics Commission has no jurisdiction to interpret or enforce Federal Statutes relating to the pre-emption of Federal Laws over State Ethics Laws. The Ethics Commission solely has jurisdiction to interpret and enforce Section 36-25 of

the Code of Alabama, 1975, the Code of Ethics for Public Officials and Employees, etc.

Based on the above, the Ethics Commission will not be able to answer question number one.

Be that as it may, Section 36-25-1(25) defines a public official as:

"(25) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2."

Based on the above, an individual appointed to a State Board is subject to the Alabama Ethics Law. Therefore, from an Ethics Commission viewpoint, Ms. Griner, even though a Federal employee serving in her official capacity, was appointed to a State Board by the Governor; and is, therefore, subject to the Alabama Ethics Law as a public official.

As relates to question number two, General Counsel states that because of the inner relationship between NASA and the U. S. Space and Rocket Center, matters that come before the ASSEC frequently affect NASA's interests in one way or another. That, of course, is a primary reason that MSFC wants to have a representative on the ASSEC and that the ASSEC desires to have an MSFC representative.

General Counsel further states that he does not believe the Alabama Ethics Laws would preclude Ms. Griner from participating in matters affecting NASA's interests.

The Alabama Ethics Law, Code of Alabama, 1975, 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 36-25-1(2) states:

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business."

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."

Section 36-25-9(c) states:

"(c) No member of any county or municipal agency, board, or commission shall vote or participate in any matter in which the member or family member of the member has any financial gain or interest."

The interests of the National Aeronautics and Space Administration and the Alabama Space and Science Exhibit Commission are so closely tied together that it would be virtually impossible for the ASSEC to take any action that did not affect NASA's interests.

The Ethics Law is designed to prevent a public official or public employee from using his or her position to provide a benefit to himself/herself, a family member, or a business with which

he or she is associated. Under the facts as presented and the relationship between NASA and the ASSEC, it would not present a conflict of interests for Ms. Griner to participate in ASSEC matters that affect NASA's interests; provided, there is not a financial benefit being bestowed.

CONCLUSION

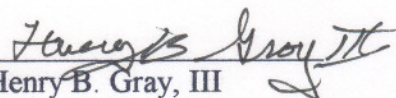
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A NASA employee, appointed to the Alabama Space Science Exhibit Commission, may participate in ASSEC matters which affect NASA's interests without violating the Alabama Ethics Law.

AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on October 21, 1997.


Henry B. Gray, III
Chair
Alabama Ethics Commission