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January 7, 1998

ADVISORY OPINION NO. 98-04

William J. Mitchell, Ed. D.
Executive Director & CEO
Therapeutic Programs, Inc.
2900 McGehee Road
Montgomery, Alabama 36111

Revolving Door/Director Of County
Department Of Human Resources Accepting
Employment With Service Provider.

The Director of a County Department of
Human Resources may not accept
employment with a business that contracts
with the County Department of Human
Resources when the County Director has
been involved in contract negotiations
between the County Department of Human
Resources and the service provider.

Dear Dr. Mitchell:

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 the Director of a County Department of Human Resources accept employment with a corporation that provides services to that County Department of Human Resources?

FACTS AND ANALYSIS

William J. Mitchell, Ed.D. is the Executive Director, CEO, and owner of a private for-profit corporation called Therapeutic Programs, Inc. He develops therapeutic foster homes and other therapeutic services exclusively for the State and County Departments of Human Resources. He has been in business since 1989.

In December of 1995, Dr. Mitchell proposed a program responding to an RFP and was granted a contract with a consortium of counties, Colbert, Franklin, Lauderdale and Lawrence, to develop a therapeutic foster home program in that area. He has proceeded with that and has developed a rather large therapeutic foster home program serving that area and other counties in the northern part of the State.

In approximately October of 1997, he received an RFP for a Family Options Program in northwest Alabama serving ten counties. He responded to that and was granted a contract to develop that service. Following the granting of that contract, he let it be known that he was looking for a director to direct that program. He was approached by a County Director of one of the counties in northwest Alabama and was requested to consider this person for the position of director.

Dr. Mitchell states that since this person is highly experienced and very capable, he felt that he should jump at the chance to hire this person. However, later the issue regarding "The Revolving Door Statute" of the Alabama Ethics Law was brought to his attention and he determined that he should seek an Ethics opinion before hiring this individual.

Dr. Mitchell states that he feels no pressure to hire this individual and does not feel there would be any recriminations or consequences for not hiring her, and he wishes to hire her because he thinks that she would be highly qualified for the position. Dr. Mitchell further states that this individual would be receiving a decrease in pay and would be taking the position only because she has a strong interest in it and would find it more suitable to her family situation.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(23) states:

"(23) 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 36-25-5(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(e) states:

“(e) No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity.”

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.”

In the facts as presented, it would appear that the County Director of Human Resources, after being involved in the contract negotiations with the service provider, approached the service provider and expressed her interest in a position with the service provider. As Director of a County Department of Human Resources has input into who the Department contracts with, it would be improper for her to accept employment with a service provider.

In addition, the fact that the Director of the County Department of Human Resources approached the service provider, while still County Director, concerning the job, would be considered soliciting a thing of value from a business which one directly inspects, regulates, or supervises.

Based on the above law and the facts as provided, the Director of a County Department of Human Resources may not, for a period of two years after leaving employment with the County Department of Human Resources, accept employment with a service provider who contracts with the Department.

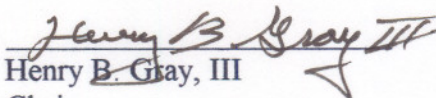
CONCLUSION

The Director of a County Department of Human Resources may not accept employment with a business that contracts with the County Department of Human Resources when the County Director has been involved in contract negotiations between the County Department of Human Resources and the service provider.

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AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on January 7, 1998.


Henry B. Gray, III
Chair
Alabama Ethics Commission