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February 4, 1998

## ADVISORY OPINION NO. 98-06

C. Daryl Drinkard  
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Conflict Of Interests/Deputy Sheriff  
Operating Wrecker Service.

A Deputy Sheriff for the Clarke County Sheriff's Department may purchase and operate a wrecker/repossession service; provided, all work done on behalf of his wrecker/repossession service, be done on his own time, whether it be annual leave or after hours; that no public equipment, facilities, time, materials, human labor, or other public property under his discretion or control be used to assist him in conducting the business of his wrecker service; that he not use the trappings of his position as a Deputy Sheriff to assist in operating the wrecker/repossession service; and further, that he not use any confidential information obtained in the course of his employment as a Deputy Sheriff to benefit or assist him in the operation of the wrecker/repossession service.

Should the Deputy Sheriff be interested in providing wrecker services to Clarke County, he should request an Advisory Opinion on that issue.

Dear Mr. Drinkard:

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 Deputy with the Clarke County Sheriff's Department purchase and operate a wrecker/repossession service?

#### **FACTS AND ANALYSIS**

Eric Smith is a Deputy Sheriff with the Clarke County Sheriff's Department. He has tentatively entered into an agreement to purchase a wrecker service. In addition to normal wrecker service activities, he would also be doing some repossession work. Mr. Drinkard, the attorney for Deputy Smith, states that any repossession or wrecker work which he would perform would be while he was not in uniform and not on duty, and he would in no way use his title or position as a Deputy Sheriff to conduct his wrecker or repossession business.

It is Deputy Sheriff Smith's desire, prior to purchasing the business, to obtain an opinion from the Alabama Ethics Commission.

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(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 36-25-1(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(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 36-25-8 states:

"No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business."

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."

Based on the above law and the facts as provided, a Deputy Sheriff for the Clarke County Sheriff's Department may purchase and operate a wrecker/repossession service; provided, all work done on behalf of his wrecker/repossession service, be done on his own time, whether it be annual leave or after hours; that no public equipment, facilities, time, materials, human labor, or other public property under his discretion or control be used to assist him in conducting the business of his wrecker service; that he not use the trappings of his position as a Deputy Sheriff to assist in operating the wrecker/repossession service; and further, that he not use any confidential information obtained in the course of his employment as a Deputy Sheriff to benefit or assist him in the operation of the wrecker/repossession service.

Further, should the Deputy Sheriff be interested in providing wrecker services to Clarke County, he should request an Advisory Opinion on that issue.

### CONCLUSION

A Deputy Sheriff for the Clarke County Sheriff's Department may purchase and operate a wrecker/repossession service; provided, all work done on behalf of his wrecker/repossession service, be done on his own time, whether it be annual leave or after hours; that no public equipment, facilities, time, materials, human labor, or other public property under his discretion or control be used to assist him in conducting the business of his wrecker service; that he not use the trappings of his position as a Deputy Sheriff to assist in operating the wrecker/repossession

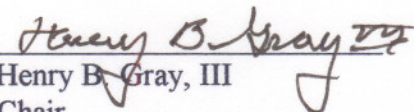
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service; and further, that he not use any confidential information obtained in the course of his employment as a Deputy Sheriff to benefit or assist him in the operation of the wrecker/repossession service.

Should the Deputy Sheriff be interested in providing wrecker services to Clarke County, he should request an Advisory Opinion on that issue.

**AUTHORITY**

By 2-1 vote of the Alabama Ethics Commission on February 4, 1998.

  
Henry B. Gray, III  
Chair  
Alabama Ethics Commission