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March 4, 1998

ADVISORY OPINION NO. 98-16

James L. Sumner, Jr.
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Revolving Door/Public Official Or Public
Employee Accepting Employment With
Private Entity.

A public official or a public employee may not, for a period of two years after leaving public employment or within two years after personally participating in the direct regulation, audit or investigation of a private entity, whichever time period is longer, accept employment with that private entity.

A public official or a public employee may not seek employment with a regulated entity while that public official or public employee is involved in the regulatory, auditing or investigatory process of that entity.

This opinion relates solely to the provisions of Section 36-25-13(d) and the two-year prohibition contained in Sections 36-25-13(a), (b), (c), and (e) will prohibit a public official or a public employee from engaging in the activities covered in those sections for a period of two years after leaving public employment.

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Dear Mr. Sumner:

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 public official or a public employee, who has personally participated in the direct regulation, audit or investigation of a private entity more than two years prior to his or her leaving public service, accept employment with that private entity?

FACTS AND ANALYSIS

On June 19, 1996, the "Revolving Door Statute" found at Section 36-25-13, Code of Alabama, 1975, went into effect. This Code Section, generally speaking, prohibits individuals from serving as lobbyists or otherwise representing clients, including their employer, before the board, agency or commission of which they are a former employee or member, for a period of two years after leaving public service. In addition, they are prohibited from accepting employment for a period of two years with an entity that they have personally participated in the direct regulation, audit or investigation of that business.

Since the "Revolving Door" section went into effect, there has been much discussion as to when the two-year time frame begins. For example, there are situations where an individual may have personally participated in the regulation of a private entity more than two years prior to his or her leaving the public service. A strict reading of the Ethics Law would prohibit him or her, for a period of another two years, from accepting employment with that entity, thereby, creating a time period of four years between the time he or she regulated that entity and the time in which he or she is allowed by law to accept employment with that entity.

The intent of the Ethics Law is to prohibit individuals in these positions from using their position to obtain future employment. For example, an individual, charged with regulating an entity, may not use his or her regulatory authority in an effort to obtain future employment.

The Ethics Law contemplates a direct correlation and relationship between that individual's regulatory authority and his or her seeking of future employment.

The situation is different, however, when a great period of time has passed between the time the individual regulated the entity and the seeking of employment with that entity.

The Alabama Ethics Law, Code of Alabama, 1975, Sections 36-25-13(a), (b), (c), (d), (e), & (f) state:

“(a) No public official shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, department, or legislative body, of which he or she is a former member for a period of two years after he or she leaves such membership. For the purposes of this subsection, such prohibition shall not include a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

(b) No public employee shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, or department, of which he or she is a former employee for a period of two years after he or she leaves such employment. For the purposes of this subsection, such prohibition shall not include a former employee of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

(c) No public official, director, assistant director, department or division chief, purchasing or procurement agent having the authority to make purchases, or any person who participates in the negotiation or approval of contracts, grants, or awards or any person who negotiates or approves contracts, grants, or awards shall enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which the person was a member or employee for a period of two years after he or she leaves the membership or employment of such governmental agency.

(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.

(e) No former public official or public employee of the state may, within two years after termination of office or employment, act as attorney for any person other than himself or herself or the state, or aid, counsel, advise, consult or assist in representing any other person, in connection with any judicial proceeding or

other matter in which the state is a party or has a direct and substantial interest and in which the former public official or public employee participated personally and substantially as a public official or employee or which was within or under the public official or public employee's official responsibility as an official or employee. This prohibition shall extend to all judicial proceedings or other matters in which the state is a party or has a direct and substantial interest, whether arising during or subsequent to the public official or public employee's term of office or employment.

(f) Nothing in this chapter shall be deemed to limit the right of a public official or public employee to publicly or privately express his or her support for or to encourage others to support and contribute to any candidate, political committee as defined in Section 17-22A-2, referendum, ballot question, issue, or constitutional amendment."

Section 36-25-12 states:

"No person shall offer or give to a member or employee of a governmental agency, board, or commission that regulates a business with which the person is associated, and no member or employee of a regulatory body, shall solicit or accept a thing of value while the member or employee is associated with the regulatory body other than in the ordinary course of business."

Sections 36-25-2(b) & (c) in pertinent part state:

"(b) 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.

(c) This chapter shall be liberally construed to promote complete disclosure of all relevant information and to insure that the public interest is fully protected."

It is also improper for a public official or a public employee to solicit or negotiate employment with a regulated entity while he or she is involved in the regulatory process, due to the covert influence that can be exerted through the regulatory process.

Based on the above law, a public official or a public employee, who has personally participated in the direct regulation, audit or investigation of a private entity, may not accept

employment with that entity, for a period of two years after his final involvement in the regulatory, auditing or investigatory process of that entity or for two years after leaving public service, whichever period of time is longer.

This opinion relates solely to the provisions of Section 36-25-13(d) and the two-year prohibition contained in Sections 36-25-13(a), (b), (c), and (e) will prohibit a public official or a public employee from engaging in the activities covered in those sections for a period of two years after leaving public employment.

CONCLUSION

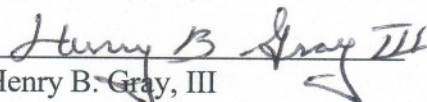
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AUTHORITY

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


Henry B. Gray, III
Chair
Alabama Ethics Commission