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April 8, 1998

ADVISORY OPINION NO. 98-19

Charles H. Gilbreath
Former County Engineer of Winston County/
Former Member of the Alabama Surface Mining Commission
Post Office Box 250
Double Springs, Alabama 35553-0250

Revolving Door/Former County Engineer
And Member Of The Alabama Surface
Mining Commission Performing The
Functions Of A Registered Engineer.

The former County Engineer for Winston County and former member of the Alabama Surface Mining Commission may practice as a Registered Professional Engineer and Land Surveyor in Winston County and the State of Alabama; provided, he not go to work for a private regulated entity for two years after retiring as County Engineer or for two years after he last personally participated in the direct regulation, audit or investigation of that entity while serving as County Engineer, whichever period is longer.

A former County Engineer for Winston County may not, for a period of two years after retiring from service with Winston County, represent clients, including his new employer, before the Winston County Commission or the Winston County Engineering Department with which he was employed.

A former member of the Alabama Surface Mining Commission may not represent clients, including his new employer, before the Alabama Surface Mining Commission, for a period of two years after leaving service with the Alabama Surface Mining Commission.

Dear Mr. Gilbreath:

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 former County Engineer for Winston County, Alabama, who is also a former member of the Alabama Surface Mining Commission, practice as a Registered Professional Engineer/Land Surveyor in the State of Alabama?

FACTS AND ANALYSIS

Charles H. Gilbreath retired as County Engineer for Winston County, Alabama on December 31, 1997. He served as a member of the Alabama Surface Mining Commission until June 20, 1996. Mr. Gilbreath is interested in working for Winston County and/or other towns in the State of Alabama doing feasibility studies, engineering roads, designing roads, bridges, water systems, sanitary sewer systems and other civil engineering matters.

During his ten years of service as a County Engineer, he was appointed to and served on the Alabama Surface Mining Commission.

Now that he has retired, Mr. Gilbreath is interested in preparing drawings and applications for mining permits and/or revisions thereto, for private businesses such as Birmingham Coal and Coke, Inc., and/or Mr. Wayne Bass, who is associated with Birmingham Coal and Coke, Inc., and he asks if he can represent Birmingham Coal and Coke, Inc. and/or Wayne Bass and/or any other company before the Alabama Surface Mining Commission.

Mr. Gilbreath also asks whether or not he may go to work for another engineering firm or surveying firm as an employee and/or an associate and do mining permits and/or surveying and/or civil engineering projects.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(13)(b) states:

“(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.”

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.”

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.”

The “Revolving Door Statute” contained in the Alabama Ethics Law prohibits an individual, who has personally participated in the direct regulation, audit or investigation of a private entity, from going to work for that entity for a period of two years after leaving public service, or two years since the most recent involvement in that process, whichever time period is longer.

Under this scenario, Mr. Gilbreath may not go to work for a private company for a period of two years if he personally participated in the direct regulation, audit or investigation of that private entity.

The "Revolving Door Provision" also prohibits an individual from representing a client, including his or her employer, before the board, agency or department of which he or she was previously employed for a period of two years.

Based on the above information, Mr. Gilbreath may not represent Birmingham Coal and Coke, Inc., or any other business before the Alabama Surface Mining Commission for a period of two years from the time he departed service on the Commission.

CONCLUSION

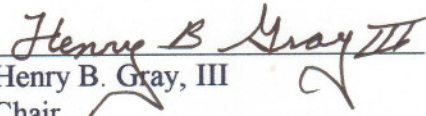
The former County Engineer for Winston County and former member of the Alabama Surface Mining Commission may practice as a Registered Professional Engineer and Land Surveyor in Winston County and the State of Alabama; provided, he not go to work for a private regulated entity for two years after retiring as County Engineer or for two years after he last personally participated in the direct regulation, audit or investigation of that entity while serving as County Engineer, whichever period is longer.

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A former member of the Alabama Surface Mining Commission may not represent clients, including his new employer, before the Alabama Surface Mining Commission, for a period of two years after leaving service with the Alabama Surface Mining Commission.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on April 8, 1998.


Henry B. Gray, III
Chair
Alabama Ethics Commission