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April 8, 1998

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ADVISORY OPINION NO. 98-22

Gary L. Jordan
Director of Planning
State Health Planning and Development Agency
and Statewide Health Coordinating Council
408 Golden Drive
Talladega, Alabama 36078

Revolving Door/Former Employee With The
State Health Planning And Development
Agency Contracting With Hospitals, Nursing
Homes And/Or Home Health Agencies.

A former employee of the State Health
Planning and Development Agency may not,
for a period of two years after leaving
employment with the Department, or within
two years of having personally participated
in the direct regulation, audit or investigation
of a health care facility, such as a hospital,
nursing home or home health agency,
whichever period is longer, accept
employment with that entity.

A former employee of the State Health
Planning and Development Agency may not,
for a period of two years after leaving public
employment, serve as a lobbyist or otherwise
represent his employer or any other entity,
before the State Health Department, the
State Health Planning and Development
Agency, or the Statewide Health
Coordinating Council, nor may he

use confidential information obtained in the course of his employment with the State Health Department to assist a health care facility in obtaining a Certificate of Need.

While a former employee of the State Health Planning and Development Agency would not be prohibited from advising or assisting these entities in developing Certificate of Need applications, he may not involve himself in the presentation of the CON to the above mentioned entities, nor may he monitor the monthly activities of SHPDA or SHCC if the monitoring is done in a lobbying capacity, nor may he use confidential information obtained in the course of his employment with the State Health Department to assist a health care facility in obtaining a Certificate of Need.

Dear Mr. Jordan:

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 Planner with the State Health Department, the State Health Planning and Development Agency and the Statewide Health Coordinating Council, contract to provide services or assistance in writing Certificate of Need applications, or monitor the process and inform health care facilities of the monthly activities of SHPDA and the SHCC?

FACTS AND ANALYSIS

Gary L. Jordan is the Director of Planning for the State Health Planning and Development Agency (SHPDA), an agency created by statute and administered through or in conjunction with the Department of Public Health. He is responsible for the development and maintenance of the

State Health Plan, which is a document that guides the Certificate of Need (CON) Review Board in the review of applications for additional health care facilities, services and equipment. He organizes and coordinates the activities of the Statewide Health Coordinating Council, which is a diversified group of providers and consumers of health care that approve or deny proposed changes to the State Health Plan. He further supervises the annual collection, review, analysis and distribution of data reported by hospitals, nursing homes, home health agencies, ambulatory surgery centers and dialysis facilities. He also processes applications for nursing home beds.

Mr. Jordan intends to retire effective July 1, 1998 and states that after retirement his experience in the field of health planning and development could provide a supplemental income. He states that health care facilities, such as hospitals, nursing homes or home health agencies may approach him for assistance in writing CON applications or State Health Plan revision requests. He states further that he could also have an opportunity to assist some of the health care consultants and attorneys who are familiar with his background and knowledge of the process. As another possibility, he states, he could monitor the process and inform health care facilities of the monthly activities of SHPDA and the SHCC.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-13(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 36-25-8 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."

The "Revolving Door" sections of the Alabama Ethics Law, effective June 19, 1996, prohibit public officials and public employees from serving for a fee as a lobbyist or otherwise representing clients, including their employer, before the public body on which they served or were employed for a period of two years after leaving service or employment. In addition, the "Revolving Door" sections prohibit public officials or public employees from accepting employment with a private business of which they personally participated in the direct regulation, audit or investigation, for a period of two years after leaving public employment, or for a period of two years after having last been involved in the regulatory, auditing or investigatory process with that entity, whichever time period is longer.

In the facts before the Ethics Commission, Mr. Jordan may not, for a period of two years, accept employment with a health care facility that he personally and directly investigated, audited or regulated while employed with the State Health Department. In addition, he may not, for a period of two years, represent or lobby for a health care facility before the State Health Department, State Health Planning and Development Agency or the Statewide Health Coordinating Council.

While he would not be prohibited from advising or assisting these entities in developing Certificate of Need applications, he may not involve himself in the presentation of the CON to the above mentioned entities, nor may he monitor the monthly activities of SHPDA or SHCC if the monitoring is done in a lobbying capacity, nor may he use confidential information obtained in the course of his employment with the State Health Department to assist a health care facility in obtaining a Certificate of Need.

CONCLUSION

A former employee of the State Health Planning and Development Agency may not, for a period of two years after leaving employment with the Department, or within two years of having personally participated in the direct regulation, audit or investigation of a health care facility, such as a hospital, nursing home or home health agency, whichever period is longer, accept employment with that entity.

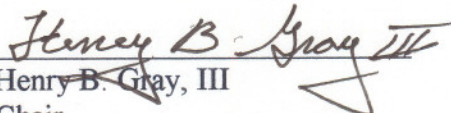
A former employee of the State Health Planning and Development Agency may not, for a period of two years after leaving public employment, represent his employer or any other entity, before the State Health Department, the State Health Planning and Development Agency, or the

Statewide Health Coordinating Council, nor may he use confidential information obtained in the course of his employment with the State Health Department to assist a health care facility in obtaining a Certificate of Need.

While a former employee of the State Health Planning and Development Agency would not be prohibited from advising or assisting these entities in developing Certificate of Need applications, he may not involve himself in the presentation of the CON to the above mentioned entities, nor may he monitor the monthly activities of SHPDA or SHCC if the monitoring is done in a lobbying capacity, nor may he use confidential information obtained in the course of his employment with the State Health Department to assist a health care facility in obtaining a Certificate of Need.

AUTHORITY

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


Henry B. Gray, III
Chair
Alabama Ethics Commission