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**RECONSIDERATION OF
ADVISORY OPINION NO. 98-44**

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Revolving Door/Retired Public Employee
Contracting Back With The Department
With Which Formerly Employed To
Perform Services.

A retired Speech-Language Pathologist with
the Albertville City School System may
contract on a part-time basis to perform
services with the Albertville City School
System after retiring from the Albertville
City School System.

An individual who, prior to his or her
retirement, or otherwise leaving public
service, held a position of authority with
hiring and firing authority, purchasing or
contracting authority, may not, for a period
of two years after retiring or otherwise
leaving public service, contract back, accept
part-time employment or re-employment
with the entity from which he or she retired
or otherwise separated from public service.

An individual who, prior to his or her
retirement, or otherwise leaving public

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service, did not hold a position of authority nor had the authority to make purchases, approve or grant contracts nor was involved in the hiring process, may accept part-time or re-employment with the entity from which he or she retired or otherwise separated from public service.

Except as stated herein to the contrary, Advisory Opinion No. 98-35 in its entirety stands as rendered by the Commission.

Dear Ms. Gullahorn:

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

In light of Advisory Opinion Nos. 98-35 and 98-44, are there any circumstances in which a retired public employee or a public employee who has otherwise separated from public service may return on a part-time basis or accept re-employment with the public entity from which he or she retired or otherwise left the service of that public entity?

FACTS AND ANALYSIS

On July 1, 1998, the Alabama Ethics Commission rendered Advisory Opinion No. 98-35. That opinion was intended to interpret as concisely and thoroughly as possible the "Revolving Door" provisions of the Alabama Ethics Law contained in Section 36-25-13. The opinion was prompted due to the retirement incentives that were passed by the Alabama Legislature during the 1998 regular session and the number of public officials who might be leaving office in the 1998 election cycle. The Commission felt it important to interpret as completely as possible the "Revolving Door" provisions due to the fact that there were numerous state employees who had planned to retire, receive the \$12,500.00 retirement incentive bonus, and then contract back with the department or agency from which they had previously retired or come back to work on a part-time basis. It was the Commission's impression that this would be in direct contradiction with

the spirit of the Ethics Law, as well as a subterfuge of the provisions of the "Revolving Door."

Based on that set of circumstances, the Commission ruled that an employee, who retired from a public agency, could not contract back with that agency for a period of two years. That opinion held that, not only could a former public official or a public employee not lobby or otherwise represent his or her employer before the entity with which he or she was formerly employed, but he or she could not personally enter into a contract to perform services with that entity for a period of two years.

On September 2, 1998, the Commission rendered Advisory Opinion No. 98-44 which held:

"A retired Speech-Language Pathologist with the Albertville City School System may not contract on a part-time basis to perform services with the Albertville City School System for a period of two years after retiring from the Albertville City School System."

"A retired Speech-Language Pathologist with the Albertville City School System may contract with Alabama School Systems other than the Albertville City School System to perform speech-language pathologist services."

Subsequent to the rendering of Advisory Opinion No. 98-44, the Commission has received numerous inquiries and requests regarding the rehiring of retirees or other individuals who have left public service, and based on new circumstances and factual situations, the Commission deems it necessary to revisit Advisory Opinion No. 98-44.

In dealing with retirees who desire to come back to work for their former agency or other individuals who have left public service, it is important to take into consideration the intent of Section 36-25-13 and, therefore, decide who would benefit from this situation.

In numerous situations, any benefit derived from the rehiring of a former employee will accrue to the agency or department rehiring that individual and not necessarily to that former employee.

The following list of examples is intended to provide guidance and be illustrative of various situations that may arise. This list is not intended to be all inclusive, and it should be understood that in these examples it is assumed that the individual did not hold a position of authority as previously defined.

Example 1. A rural school system may have only one qualified teacher in that district to

teach French classes. Unless that school board is able to hire on a part-time basis that retired French teacher, the students in that school system will not be able to take French classes.

Example 2. There may not be anyone available other than that retiree who can train new employees to perform certain functions.

Example 3. A secretary who desires to take maternity leave and at the end of that maternity leave wishes to come back to her former position.

Example 4. An individual, who has worked for XYZ department of state government, transfers to ABC department and after a period of time desires to transfer back to XYZ department.

Example 5. An individual resigns from state employment in lieu of a pending lay-off.

Example 6. An individual retires then decides after a short period of time that he or she does not like retirement and would like to come back to work, thereby returning to the status quo.

Example 7. A college instructor retires but would like to teach one or two classes per quarter at the university from which he or she retired.

All of these situations present unique questions that go directly to the intent of Section 35-25-13.

The "Revolving Door" provisions were inserted in the 1995 Ethics Reform Act in an effort to prevent public officials and public employees from being in a position whereby they could use their public office to benefit themselves, either by having leverage in dealing with a private business and thereby obtaining employment with that private business or an individual leaving public service and returning in either a lobbying capacity or other representative capacity before the department, agency, board or commission on which they served or with which they were employed.

The crucial determinations to make in determining whether or not there are circumstances when a retired individual may come back to work are as follows:

1. Was that individual, prior to his or her retirement or separation from public service, in a position of authority with hiring/firing authority, purchasing or contracting authority.

2. Was that individual, prior to his or her retirement or separation from public service, a third or fourth tier employee or a line employee who did not have any authority over purchasing,

contracting, or any involvement in the hiring process.

The above categories must be looked at separately due to the inherent authority contained in the first class of individuals.

Section 36-25-13(c) states that:

“(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.”

The above section recognizes that certain individuals by virtue of their position, such as public officials, directors, departmental or division chiefs, etc., have inherent in their job classification, certain responsibilities and have the authority to determine to some degree the outcome of the contractual process, grant process and hiring process. It is clear that these individuals, as well as those individuals with the express authority to make purchases or negotiate or approve contracts, grants or awards, may not retire or leave public service and contract back with that governmental agency for a period of two years. Otherwise, these individuals would potentially have the leverage to arrange for themselves, part-time employment prior to their retirement.

On the other hand, those individuals without the above authority, such as the average line employee, secretaries, clerical aides, etc., do not have the ability to influence or affect contracts, purchases or the hiring practices of that department. It is these individuals, who under certain circumstances, may be allowed to return to the department or agency from which they retired or left. For example, an individual returning from maternity leave, an individual who has transferred out of the department wanting to transfer back, an individual who resigns in lieu of being laid-off or other similar circumstances where an individual merely wishes to return to the status quo or a person not in a position of authority desires to be hired on a part-time basis.

Section 36-25-13(a) states:

“(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.”

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(c) states:

“(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.”

Based on the above law and the facts as provided, a retired Speech-Language Pathologist with the Albertville City School System may contract on a part-time basis to perform services with the Albertville City School System after retiring from the Albertville City School System.

Further, an individual who, prior to his or her retirement, or otherwise leaving public service, held a position of authority with hiring and firing authority, purchasing or contracting authority, may not, for a period of two years after retiring or otherwise leaving public service, contract back, accept part-time employment or re-employment with the entity from which he or she retired or otherwise separated from public service.

Additionally, an individual who, prior to his or her retirement, or otherwise leaving public service, did not hold a position of authority nor had the authority to make purchases, approve or grant contracts nor was involved in the hiring process, may accept part-time or re-employment with the entity from which he or she retired or otherwise separated from public service.

Except as stated herein to the contrary, Advisory Opinion No. 98-35 in its entirety stands as rendered by the Commission.

CONCLUSION

A retired Speech-Language Pathologist with the Albertville City School System may contract on a part-time basis to perform services with the Albertville City School System after retiring from the Albertville City School System.

An individual who, prior to his or her retirement, or otherwise leaving public service, held a position of authority with hiring and firing authority, purchasing or contracting authority, may not, for a period of two years after retiring or otherwise leaving public service, contract back, accept part-time employment or re-employment with the entity from which he or she retired or otherwise separated from public service.

An individual who, prior to his or her retirement, or otherwise leaving public service, did not hold a position of authority nor had the authority to make purchases, approve or grant contracts nor was involved in the hiring process, may accept part-time or re-employment with the entity from which he or she retired or otherwise separated from public service.

Except as stated herein to the contrary, Advisory Opinion No. 98-35 in its entirety stands as rendered by the Commission.

AUTHORITY

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



Camille S. Butrus
Chair
Alabama Ethics Commission