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September 2, 1998

ADVISORY OPINION NO. 98-46

Tina McWilliams, L.C.S.W., P.I.P.
175 Twin Elm Lane
Cherokee, Alabama 35616

Revolving Door/Formal Employee Of The
Jefferson County Department Of Human
Resources Accepting Employment With The
Colbert County Department Of Human
Resources.

A former employee of the Jefferson County
Department of Human Resources may accept
employment with the Colbert County
Department of Human Resources, as these
are separate entities with different appointing
authorities.

Dear Ms. McWilliams:

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 employee of the Jefferson County Department of Human Resources
accept employment with the Colbert County Department of Human Resources?

FACTS AND ANALYSIS

Tina McWilliams worked for the Jefferson County Department of Human Resources from July of 1994 through May of 1997. Ms. McWilliams began working there in the Child Welfare Program. When Ms. McWilliams quit (not retired) working for Jefferson County in May of 1997, she was working in the Adult Service Unit.

Colbert County Department of Human Resources would like Ms. McWilliams to train Foster Parents for the Department, as it requires specialized training so that foster parents will meet R. C. Consent Decree guidelines, and Ms. McWilliams has this training.

Ms. McWilliams is now a Social Worker in private practice and also is the Clinical Director of a substance abuse clinic.

Ms. McWilliams would train the foster parents in her private practice. Ms. McWilliams is her own employer. She does not work for anyone. She receives no reimbursement from another person, group or entity. She also does not represent anyone. She does not act as anyone's substitute or agent.

Colbert County Department of Human Resources and Jefferson County Department of Human Resources have different appointing authorities. It is required that one take a state test but get on the individual county register from which one wishes to be hired. In other words, if someone wishes to be hired by the Jefferson County Department of Human Resources, they must be hired by their County Director. If they wish to be hired by the Colbert County Department of Human Resources, they must be hired by that County Director.

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(13) defines governmental corporations and authorities as:

“(13) GOVERNMENTAL CORPORATIONS AND AUTHORITIES. Public or private corporations and authorities, including but not limited to, hospitals or other health care corporations, established pursuant to state law by state, county or municipal governments for the purpose of carrying out a specific governmental function. Notwithstanding the foregoing, all employees, including contract employees, of hospitals or other health care corporations and authorities are exempt from the provisions of this chapter.”

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.”

Section 36-25-7(b) states that:

“(b) No public official or public employee shall solicit or receive a thing of value for himself or herself or for a family member of the public employee or family member of the public official for the purpose of influencing official action.”

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.”

Even though a State register is used by persons seeking employment with various Departments of Human Resources, each County Department of Human Resources has the authority to hire their own employees.

While Ms. McWilliams would be barred by the “Revolving Door” from going back to work for the Jefferson County Department of Human Resources, there would not be a prohibition in her going to work for the Colbert County Department of Human Resources, as there are different appointing authorities.

CONCLUSION

A former employee of the Jefferson County Department of Human Resources may accept employment with the Colbert County Department of Human Resources, as these are separate entities with different appointing authorities.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on September 2, 1998.


Camille S. Butrus
Chair
Alabama Ethics Commission