

STATE OF ALABAMA  
ETHICS COMMISSION



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November 4, 1998

**ADVISORY OPINION NO. 98-56**

Joseph L. Linder  
Special Investigator  
Attorney General's Office  
Environmental Division  
Route 1, Box 824  
Gilbertown, Alabama 36908

Revolving Door/Special Investigator  
Assigned To The Office Of The Attorney  
General's Environmental Division,  
Contracting With The Attorney General's  
Office To Complete Work Already Begun  
And To Investigate Matters, After  
Assignment Date Is Up.

A Special Investigator assigned to the Office  
of the Attorney General's Environmental  
Division, who does not hold a position of  
authority, including hiring authority or the  
authority to grant or approve contracts or  
make purchases, may contract with the  
Attorney General's Office to complete work  
already begun and to investigate matters  
after his employment with the Office of the  
Attorney General ends.

Dear Mr. Linder:

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 an appointed Special Investigator through an unclassified appointment, who was assigned to the Office of the Attorney General's Environmental Division, contract with the Attorney General's Office on an hourly basis to complete work already begun and to investigate matters, after his assignment date of August 1, 1998 is up?

### **FACTS AND ANALYSIS**

Joseph L. Linder was employed as an appointed Special Investigator through an unclassified appointment and assigned to the Environmental Division of the Attorney General's Office until August 1, 1998. A number of matters that Mr. Linder worked on are still pending. Mr. Linder questions whether or not under current Ethics Law and regulations, he may contract with the Attorney General's Office on an hourly basis in order to complete work already begun and to investigate matters requested of him by the Attorney General's Office and, therefore, requests this opinion.

Mr. Linder states that he is aware that the Alabama State Retirement System only allows a retiree to make the amount allowable under Social Security guidelines. The contract amount would not exceed these guidelines.

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.”

The Commission has recognized that there is a difference between individuals who hold positions of authority, including the authority to make hiring decisions, grant or award contracts or make purchases and an individual who does not have the above responsibilities.

An individual, who holds a position of authority, including the above listed items, may not for a period of two years, contract back with the agency with which he or she was formerly employed. This prohibition does not extend to an individual without these responsibilities or authority.

Based on the facts as provided and the above law, a Special Investigator assigned to the Office of the Attorney General’s Environmental Division, may contract with the Attorney General’s Office to complete work already begun and to investigate matters, as long as that individual did not hold a position of authority, including the authority to make hiring decisions, grant or award contracts or make purchases.

### CONCLUSION

A Special Investigator assigned to the Office of the Attorney General’s Environmental Division, who does not hold a position of authority, including hiring authority or the authority to grant or approve contracts or make purchases, may contract with the Attorney General’s Office to complete work already begun and to investigate matters after his employment with the Office of the Attorney General ends.

### AUTHORITY

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

  
Camille S. Butrus  
Chair  
Alabama Ethics Commission