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July 7, 1999

ADVISORY OPINION NO. 99-25

Alfonso Denson
Deputy Director
Birmingham Airport Authority
116 Englewood Drive
Fairfield, Alabama 35064

Conflict Of Interests/Personal Gain/Deputy
Director Of The Birmingham Airport
Authority Pursuing Business Opportunities
At Other Airports As A Consultant Or
Entering Into Business Ventures With Firms
That Have A Business Operation With The
Birmingham Airport.

The Deputy Director of the Birmingham
Airport Authority may pursue business
opportunities at other airports as a
consultant; provided, he not use public
equipment, facilities, time, materials, human
labor or other public property under his
discretion or control to assist him in
obtaining the opportunities or in conducting
the consulting business.

In addition, the Deputy Director of the
Birmingham Airport Authority may not enter
into business ventures with firms that
conduct business with the Birmingham
Airport.

Dear Mr. Denson:

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

Does the Alabama Ethics Law preclude the Deputy Director of the Birmingham Airport Authority from pursuing business opportunities at other airports as a consultant or entering into a business venture with firms that have a business operation with the Birmingham Airport Authority?

FACTS AND ANALYSIS

The facts as presented to this Commission are as follows:

Mr. Alfonso Denson is currently employed as the Deputy Director of the Birmingham Airport Authority and requests a ruling from the Alabama Ethics Commission concerning several business opportunities that he is interested in pursuing and whether pursuing those opportunities would be in violation of the Alabama Ethics Law.

In his capacity as the Deputy Director of the Birmingham Airport Authority, he is directly involved with the development and management of the Airport. He is recognized nationally for several reasons, one of which is his expertise and innovative approach to a broad array of aviation issues. This recognition has been paramount in his election to two national Aviation Boards, the American Association of Airport Executives and Airport Minority Advisory Council.

Mr. Denson has recently received offers to perform consulting work relating to aviation issues, as well as enter into a partnership venture for the purpose of obtaining business at other airports throughout the nation.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-5(a) states:

"(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the

public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain."

Section 36-25-5(c) states:

"(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy."

Section 36-25-1(23) defines a public employee as:

"(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(24) defines a public official as:

"(24) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2."

Section 36-25-2(b) in pertinent part states:

"An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity,

available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided."

Section 36-25-1(32)(a) defines a thing of value as:

"Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event offered only to public officials, unsecured loan, other than those loans made in the ordinary course of business, reward, **promise of future employment**, or honoraria." (Emphasis added)

Section 36-25-7(a) states:

"No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of a public official and none of the aforementioned shall solicit or receive a thing of value for the purpose of influencing official action."

Section 36-25-7(b) states:

"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 36-25-7(d) states:

"(d) No public official or public employee, shall solicit or receive any money in addition to that received by the public official or public employee in an official capacity for advice or assistance on matters concerning the legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member. Notwithstanding the foregoing, nothing in this section shall be construed to prohibit a public official or public employee from the performance of his or her official duties or responsibilities."

Section 36-25-12 states:

"No person shall offer or give to a member or employee of a governmental agency, board, or commission that regulates a business with which the person is associated, and no member or employee of a regulatory body, shall solicit or

accept a thing of value while the member or employee is associated with the regulatory body other than in the ordinary course of business."

Section 36-25-1(8) in pertinent part states:

"CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs."

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."

Sections 36-25-13(a), (b), (c) & (d) state:

"(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.

(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.

(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.

(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."

If Mr. Denson was to enter into business ventures with firms doing business with the Birmingham Airport, it would be virtually impossible for him to separate his duties as Deputy Director from his private ventures. Therefore, while Mr. Denson, on his own time, whether it is after hours, weekends, etc., may enter into business ventures with other airports over which he has no jurisdiction, he may not enter into business ventures with those companies doing business with the Birmingham Airport.

Based on the above law and the facts as provided, the Deputy Director of the Birmingham Airport Authority may pursue business opportunities at other airports as a consultant; provided, he not use public equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in obtaining the opportunities or in conducting the consulting business.

In addition, the Deputy Director of the Birmingham Airport Authority may not enter into business ventures with firms that conduct business with the Birmingham Airport.

CONCLUSION

The Deputy Director of the Birmingham Airport Authority may pursue business opportunities at other airports as a consultant; provided, he not use public equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in obtaining the opportunities or in conducting the consulting business.

In addition, the Deputy Director of the Birmingham Airport Authority may not enter into business ventures with firms that conduct business with the Birmingham Airport.

AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on July 7, 1999.

A handwritten signature in cursive script, reading "Camille S. Butrus", written in dark ink.

Camille S. Butrus

Chair

Alabama Ethics Commission