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September 1, 1999

**ADVISORY OPINION NO. 99-37**

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Conflict Of Interests/Spouse Of The Newly Appointed Acting Director Of The Alabama State Docks Continuing To Provide Professional Services To The Alabama State Docks.

The spouse of the newly appointed Acting Director of the Alabama State Docks, who has previously reported to the Director of the Alabama State Docks, may not continue to provide professional services to the Alabama State Docks, as there exists an unavoidable conflict of interests while her husband is the Acting Director of the Alabama State Docks.

Dear Mr. Loveless:

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 the law firm of Loveless & Lyons' professional services with the Alabama State Docks continue to be provided by Beth Marietta Lyons, the spouse of the newly appointed Acting Director James K. Lyons, without presenting a conflict of interests under the Alabama Ethics Law?

### FACTS AND ANALYSIS

The facts as have been presented to this Commission are as follows:

Mr. Ralph Loveless, an attorney with the law firm of Loveless & Lyons has requested an opinion on the above posed question.

For approximately eight years now the law firm of Loveless & Lyons, particularly Mr. Loveless' partner, Beth Marietta Lyons, has rendered legal services for the Alabama State Docks. The services have been mainly in areas of legislative activities that affected the Docks, with some occasional spillover into related areas. In essence they have been contract professionals, although without a formal written contract. Their bills are rendered monthly, based on an hourly rate plus expenses. That rate has remained unchanged throughout the time of their representation.

Ms. Lyons' husband, James K. Lyons, has been serving as the Docks' Assistant Director for Trade and Development for the past two years. On July 1, 1999, Governor Siegelman appointed Mr. Lyons Acting Director, succeeding the retiring Director, Jack Ravan.

As stated above, there has never been a written contract between Loveless & Lyons, or its partner, Beth Marietta Lyons, and the State Docks. The professional legal services rendered by the firm were largely made up of lobbying activities conducted by Ms. Lyons. In addition to what normally would be considered lobbying, they provided legal services in drafting and reviewing legislation, preparing position papers, substitute bills and amendments, and reviewing contracts and statutory law. They understand that their services were categorized by the State Docks as "outside legal services."

Their services began in 1991 at the request of then Docks Director John Dutton. They continued when Jack Ravan became Director. The general scope of the representation did not change at any time during the directorship of Mr. Dutton or Mr. Ravan.

Insofar as the filing requirements of Section 36-25-11 of the *Alabama Ethics Act* are concerned, they note that the section begins with an exemption for professional contracts. But,

of even greater importance is the fact that there was no contract to file with the Commission.

No contract was ever awarded or signed. The negotiations that led to Loveless & Lyons providing the services were initially conducted between Beth Marietta Lyons and Docks' Director John Dutton. The nature of the services and the compensation remained unchanged while Mr. Ravan was Director, with no further negotiations taking place.

The ultimate official at the State Docks to whom reporting has been due has been the Director, first John Dutton, and then Jack Ravan. However, much of the work has been done in cooperation with Sarah Teague, Director of Public Affairs for the Docks, and other administrators.

Since Mr. Lyons became Acting Director, no one in the firm, Loveless & Lyons, has performed any legal services for the Alabama State Docks. The only billing or statement of account that has been rendered has been for services performed prior to Mr. Lyons' appointment.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24) states:

"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 36-25-1(8) states:

"(8) 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 36-25-1(12) defines a family member of the public official as:

"FAMILY MEMBER OF THE PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official."

Section 36-25-5(a) states:

"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 36-25-8 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."

Section 36-25-1(2) states:

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business."

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 36-25-9(c) states:

“(c) No member of any county or municipal agency, board, or commission shall vote or participate in any matter in which the member or family member of the member has any financial gain or interest.”

Section 36-25-11 states:

“Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into.”

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

“(b) 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.”

The definition of a conflict of interests includes both action or inaction on the part of a public official or public employee. Such a conflict of interests does not, in and of itself, constitute a violation of the Ethics Law, as there are certain situations where the public official or public employee can remove himself or herself from the process in such a manner that he or she has no involvement. In that scenario, the conflict of interests would fall short of an actual violation. However, should the public official or public employee not remove himself or herself from the process, then take some affirmative action, the conflict would become a violation.

In the facts before the Commission, the conflict cannot be resolved for two reasons. First of all, if Mr. Lyons takes no action to replace his wife as the lobbyist for the State Docks, his inaction would turn the conflict of interests into a violation of the Ethics Law, as a family member's financial interests would be affected.

In addition, if Mr. Lyons were to delegate the responsibility of dealing with his wife and her lobbying activities to a subordinate, that subordinate would answer directly to Mr. Lyons; therefore, Mr. Lyons would still be directly involved.

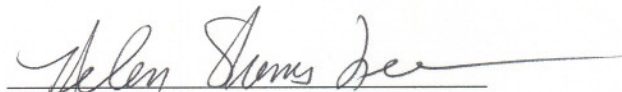
Based on the above law and the facts as provided, as Ms. Beth Marietta Lyons has previously reported to the Director of the Alabama State Docks and her husband, James K. Lyons, has now been appointed Acting Director of the Alabama State Docks, there would be an unavoidable conflict of interests in Ms. Lyons continuing to provide professional services to the Alabama State Docks while her husband is the Acting Director of the Alabama State Docks. Therefore, Ms. Lyons may not continue to provide professional services to the Alabama State Docks as long as her husband is Acting Director of the Alabama State Docks.

#### CONCLUSION

The spouse of the newly appointed Acting Director of the Alabama State Docks, who has previously reported to the Director of the Alabama State Docks, may not continue to provide professional services to the Alabama State Docks, as an unavoidable conflict of interests exists while her husband is the Acting Director of the Alabama State Docks.

#### AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on September 1, 1999.



Helen Shores Lee  
Chair  
Alabama Ethics Commission