



STATE OF ALABAMA ETHICS COMMISSION



MAILING ADDRESS
P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS
RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104

COMMISSIONERS

Charles Price, Ret. Circuit Judge, Chair
Beverlye Brady, Vice-Chair
John Plunk
Lyn Stuart, Ret. Chief Justice
Stanton H. McDonald

Thomas B. Albritton
Executive Director

TELEPHONE (334) 242-2997
FAX (334) 242-0248

WEB SITE: www.ethics.alabama.gov

June 3, 2020

ADVISORY OPINION NO. 2020-02

Ryan Robichaux
Bradley Arant Boulton Cummings
On behalf of Fayette County
Board of Education
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203

“Revolving Door”/Public official
employment with former Board

A public official may seek a position as a retired state employee for the Board of which he is a member if he resigns from the Board, does not and has not previously used his position as a Board member to create the opportunity for himself, does not use any confidential information he obtained while on the Board in his pursuit of the position, and does not seek to corruptly influence his former Board members in their official actions in order to secure the position.

Dear Mr. Robichaux:

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.

FACTS

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

In early 2020, the principal of Fayette County High School determined that the high school would not renew the employment contract of the current football coach. The principal is familiar with Walden Tucker, the previous head football coach for Fayette County High School from 1984 to 2010 and would like to consider him as a candidate. At the time of his retirement, Coach Tucker was the winningest coach in Alabama high school football history. After his retirement, Coach Tucker was elected to the Fayette County Board of Education in 2012 and remains a member of the Board today. After receiving informal guidance from the Commission's staff that he could be considered for the position, the principal, Superintendent, and Deputy Superintendent for Fayette County Schools contacted Mr. Tucker to ask if he would be interested in being a candidate for the position if certain guidelines were met and provided him with an estimated salary. Mr. Tucker was unaware that the Superintendent sought and received informal guidance; he did not seek out this coaching position; and he did not know the Principal wanted to consider him for the position prior to the discussions that occurred after the Superintendent received informal guidance regarding the potential employment. Were Mr. Tucker to be hired for the coaching position, he would be hired as a retired state employee, not as an independent contractor.

QUESTIONS PRESENTED

May the Board consider Coach Tucker, a current Board member, as a candidate for the position of head football coach at the High School, over which that Board has supervision and ultimate hiring authority, if Coach Tucker resigns from the Board prior to seeking the position?

ANALYSIS

Mr. Tucker is a public official by virtue of his position on the Fayette County Board of Education.¹ In Advisory Opinion 2019-11, the Commission recognized and agreed with the following guidance provided by The Code of Ethics Clarification and Reform Commission (hereinafter the "Revision Commission") regarding employees and officials returning to public service under the "Revolving Door" statute, Ala. Code §36-25-13(d):

Subsection (d) of the revolving door statute involves procurements and purchases by

¹ 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.

agencies or governmental bodies, as well as the approval of contracts, grants, or other awards. This subsection prohibits, for a two-year waiting period, certain former top level agency officials or employees and others within an agency who had significant authority or involvement in such activities from leaving their employment or position with the agency and then re-engaging with their former agency in any of these activities. Based on the subsection's prohibitive language regarding "contracting" with former members or employees, this subsection has also been interpreted in the past to prohibit those same individuals from being either rehired or contractually engaged by their former public employer for the two-year waiting period. The consensus of the subcommittee was that this particular effect of statutory drafting and interpretation did not match the primary purpose and scope of concern of the revolving door prohibitions, and the subcommittee recommended statutory modifications that would clarify that the two-year revolving door waiting period under subsection (d) of the Revolving Door law does not apply to agencies or governmental bodies who rehire former employees or contract with former employees or officials to provide personal or professional services on behalf the agency.²³

All employees of Fayette County High School, whether full-time or part-time, are ultimately hired by the Board of Education, the Board on which Mr. Tucker currently sits. Because of that, if Mr. Tucker would like to be a candidate for the coaching position, he would have to resign his position as a Board member. Once he has resigned, he will no longer be a public official and, therefore, would be unable to use his public position for personal gain in violation of Ala. Code §36-25-5(a).⁴ As an applicant, Mr. Tucker would not be negotiating a contract with the Fayette County Board of Education on behalf of a private employer. Rather, he would be a former public official seeking to return to public service as a retired state employee. Consistent with Advisory Opinion 2019-11, Ala. Code §36-25-13(d) does not prohibit Mr. Tucker from being considered as a candidate for the coaching position at Fayette County High School or accepting that position if he resigns before seeking the position.

Like any other public official, Mr. Tucker may not use his public position for personal gain in violation of Ala. Code §36-25-5(a).⁵ This means that he cannot seek the coaching position while

² Copies of the entire Report, which contains, as well, the official position of the Attorney General, the Director of the Ethics Commission and the comments of other interests on these issues can be obtained from the Legislative Services Agency. LSA can be contacted at 11 S Union St# 620, Montgomery, AL 36130, phone: (334) 242-7950.

³ The Revision Commission guidance relates only to the two-year prohibition contained in Ala. Code §36-25-13(d) regarding a public official contracting with the agency of which the person had previously been a member.

⁴ In Advisory Opinion 2017-14, the Commission confirmed that Ala. Code §36-25-13(d) applies to public officials just as it applies to public employees holding a position of authority. The Commission also clarified that certain previous opinions concerning public officials seeking employment with their previous board or commission could not be relied upon, primarily because those opinions lacked any analysis of section 13(d) and for that reason were confusing.

⁵ No public official or public employee shall use or cause to be used his or her official position or office to obtain


he is still on the Fayette County School Board. He must resign his position before he becomes a candidate and he may not use his public position to influence his fellow Board members. Mr. Tucker may not seek to corruptly influence the official action of any of the Board members in violation of Ala. Code §36-25-7(a) if he were to apply for the position and he may not use any confidential information he has obtained during his membership on the Board of Education in his pursuit of the coaching position.⁶ This opinion only addresses the specific facts presented to the Commission and may not be relied upon by any other requestor without first seeking guidance from the Commission or the Commission's staff.

CONCLUSION

A public official may seek a position as a retired state employee for the Board of which he is a member if he resigns from the Board, does not and has not previously used his position as a Board member to create the opportunity for himself, does not use any confidential information he obtained while on the Board in his pursuit of the position, and does not seek to corruptly influence his former Board members in their official actions in order to secure the position.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on June 3, 2020.



Charles Price
Chair
Alabama Ethics Commission

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. Ala. Code §36-25-5(a).

⁶See Ala. Code §36-25-8