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May 14, 1997

ADVISORY OPINION NO. 97-31

Elizabeth Bookwalter
Associate Counsel
State of Alabama
Department of Insurance
135 South Union Street
Post Office Box 303351
Montgomery, Alabama 36130-3351

Conflict Of Interests/Attorney With
Alabama Department Of Insurance Serving
As Arbitrator On Automobile Questions.

An attorney with the Alabama Department of Insurance may provide arbitration services on automobile questions to the National Center for Dispute Resolution; provided, that all work is done on her own time; that no public equipment, facilities, time, materials, human labor, or other public property under her discretion or control are used in the arbitration process; that the entities she is providing arbitration services to, are not entities that are regulated by the Alabama Department of Insurance; that she not use her position as Associate Counsel for the Department of Insurance or the mantle of the office to obtain the arbitration contract; and provided further, that she not arbitrate a dispute involving individuals or businesses with whom she directly regulates in her official capacity with the Department of Insurance.

Should the National Center For Dispute Resolution involve training, the Associate Counsel for the Department of Insurance

may accept reasonable transportation, food and beverages where the provider is present and lodging expenses in the continental United States and Alaska which are provided in conjunction with the educational training purpose together with any hospitality associated therewith; provided that such hospitality is less than 50 percent of the time spent at such event; and provided further, that if the aggregate value of such transportation, lodging, food and beverages and any hospitality provided to the Associate Counsel in conjunction with the training is in excess of two hundred and fifty dollars (\$250) within a calendar day, the total amount expended must be reported to the Ethics Commission by the provider.

The requestor of this opinion is advised to check internal policies of the Insurance Department to determine the applicability of any internal policies.

As the Associate Counsel for the Department of Insurance is commissioned as an Assistant Attorney General, it is further requested that she contact the Attorney General's Office for the applicability of any other laws or applicable regulations.

Dear Ms. Bookwalter:

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 Associate Counsel for the Alabama Department of Insurance seek outside employment as an Arbitrator on automobile questions with the National Center for Dispute Resolution?

FACTS AND ANALYSIS

Elizabeth Bookwalter is an Associate Counsel with the State of Alabama Department of Insurance. As Associate Counsel, her job responsibilities include representing the Insurance Commissioner and the Insurance Department, both administratively and in court. Ms. Bookwalter is interested in entering into a contract with the National Center for Dispute Resolution as an Arbitrator on automobile questions. Her services will be paid for by the National Center for Dispute Resolution and will not be paid for by individual parties to the procedure, and her arbitration hearings will be limited solely to Chrysler Corporation automobiles. Ms. Bookwalter states that at the present time there is no relationship between the arbitration proceedings on the automobile questions and the performance of her duties as Associate Counsel for the Department of Insurance.

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

"(24) 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(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 36-25-1(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 36-25-5(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 36-25-2(b) 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 36-25-5(e) states:

"(e) No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity."

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."

Based on the facts as provided and the above law, Ms. Bookwalter, Associate Counsel with the Alabama Department of Insurance may provide arbitration services on automobile questions to the National Center for Dispute Resolution; provided, that all work is done on her own time; that no public equipment, facilities, time, materials, human labor, or other public property under her discretion or control are used in the arbitration process; that the entities she is providing arbitration services to, are not entities that are regulated by the Alabama Department of Insurance; that she not use her position as Associate Counsel for the Department of Insurance to obtain the arbitration contract; that a copy of the contract is filed with the Ethics Commission within ten (10) days after the contract has been entered into; and provided further, that she not arbitrate a dispute involving individuals or businesses with whom she directly regulates in her official capacity with the Department of Insurance.

CONCLUSION

An attorney with the Alabama Department of Insurance may provide arbitration services on automobile questions to the National Center for Dispute Resolution; provided, that all work is done on her own time; that no public equipment, facilities, time, materials, human labor, or other

public property under her discretion or control are used in the arbitration process; that the entities she is providing arbitration services to, are not entities that are regulated by the Alabama Department of Insurance; that she not use her position as Associate Counsel for the Department of Insurance or the mantle of the office to obtain the arbitration contract; and provided further, that she not arbitrate a dispute involving individuals or businesses with whom she directly regulates in her official capacity with the Department of Insurance.

Should the National Center For Dispute Resolution involve training, the Associate Counsel for the Department of Insurance may accept reasonable transportation, food and beverages where the provider is present and lodging expenses in the continental United States and Alaska which are provided in conjunction with the educational training purpose together with any hospitality associated therewith; provided that such hospitality is less than 50 percent of the time spent at such event; and provided further, that if the aggregate value of such transportation, lodging, food and beverages and any hospitality provided to the Associate Counsel in conjunction with the training is in excess of two hundred and fifty dollars (\$250) within a calendar day, the total amount expended must be reported to the Ethics Commission by the provider.

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AUTHORITY

By 3 - 0 vote of the Alabama Ethics Commission on May 14, 1997.



Camille S. Butrus
Acting Chair in the absence of the
Chair and Vice-Chair
Alabama Ethics Commission