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Helen Shores Lee, Esq., Vice-Chairman
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Russell Jackson Drake, Esq.

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



James L. Sumner, Jr.
Director

Hugh R. Evans, III
Assistant Director
General Counsel

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

August 4, 1999

ADVISORY OPINION NO. 99-33

C. Britt Turner, IV
Dean, Technical Education
and
Arthur Howington
Dean, Academic Services
Shelton State Community College
9500 Old Greensboro Road
Tuscaloosa, Alabama 35405

Revolving Door/Retired Deans Of
Community College Accepting Part-Time
Employment With The College After Their
Retirement.

Retired deans of a community college may
not accept part-time employment with that
community college, for a period of two years
after retirement or otherwise leaving public
service, as they held positions of authority at
the community college.

Dear Deans Turner and Howington:

The Alabama Ethics Commission is in receipt of your requests for a formal Advisory
Opinion of this Commission, and this opinion is issued pursuant to those requests.

QUESTION PRESENTED

May retired deans of Shelton State Community College accept part-time employment with Shelton State Community College after their retirement?

FACTS AND ANALYSIS

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

C. Britt Turner, IV and Arthur Howington are both deans of Shelton State Community College and would like to accept part-time employment with Shelton State Community College after retirement.

As Dean of Technical Education, C. Britt Turner's primary job is to supervise the division, submit budgets, and carry out day-to-day activities of the instructional unit of the college.

While the president of the college has sole authority to employ, terminate and promote personnel, deans do recommend applicants for employment. Employment decisions are made through a process whereby a search committee submits the names of three candidates to the president from which he makes the final decision on employment.

Although purchases necessary to carry out the day-to-day activities of the division are submitted by Dean Turner to the business office, the president has the final approval on all purchases of substantial amounts.

Dean Turner is a tenured faculty member of the college. His teaching credentials are in another division (Academic) of the college, in which he has no supervisory responsibility.

Dean Turner serves in no other capacity beyond instructional supervision at the college.

As Dean of Academic Services, Arthur Howington is responsible for the general supervision of the teaching/learning process in the disciplines and teaching fields assigned to the Academic Services Division. On the whole, these are general education disciplines, but some disciplines/fields, such as nursing and respiratory care technology, are included.

The president of the college has the sole authority to make contracts for the institution, including all contracts involving the activities and operations of the Academic Services Division.

Although in the day-to-day operations of the Academic Services Division, Dean Howington submits requisitions for purchases to the Business Office, the president has final authority to approve all purchases of the institution.

Dean Howington is a tenured faculty member of the college, having earned that position prior to his being appointed dean.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24) defines a public official as:

“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(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 36-25-5(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 36-25-13(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."

An individual who, prior to his or her retirement, or otherwise leaving public service, held a position of authority with hiring and firing authority, or the authority to recommend employment, purchasing or contracting authority, may not, for a period of two years after

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retiring or otherwise leaving public service, contract back, accept part-time employment or re-employment with the entity from which he or she retired or otherwise separated from public service.

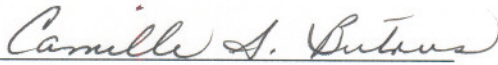
Based on the above law and the facts as provided, retired deans of a community college may not accept part-time employment with that community college, for a period of two years after retirement or otherwise leaving public service, as they held positions of authority at the community college.

CONCLUSION

Retired deans of a community college may not accept part-time employment with that community college, for a period of two years after retirement or otherwise leaving public service, as they held positions of authority at the community college.

AUTHORITY

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


Camille S. Butrus
Chair
Alabama Ethics Commission