

THE ALABAMA ETHICS LAW: A Retrospective

By James L. Sumner, Jr.

The Alabama Ethics Law, *Code of Ethics for Public Officials, Employees etc., Section 36-25-1 through 36-25-30, Code of Alabama, 1975*, which was conceived in a cavalier game of "chicken" between the state Senate and House of Representatives and then, once it became law, barraged with every possible legal challenge imaginable, just celebrated the 25th anniversary of its enactment. September 14, 1998 marked that milestone anniversary for the law few thought would live to see its first, much less its 25th, birthday. Although the Ethics Law has been revised several times—most significantly in 1995—it still stands as a strong deterrent to using one's public office or employment for your personal gain.

Enactment of the Law

The genesis of the law was a third-rate burglary, which became known as "Watergate." The "Watergate" scandal not only led to a President having to resign from office, it opened a floodgate of reform legislation at both the federal and state levels. The Federal Elections Commission was created in the immediate aftermath of "Watergate." The Ethics in Government Act of 1978, the federal ethics act, was

enacted into law. Ethics laws, campaign finance and election reforms were adopted and revised across the country. On the heels of this movement, Alabama adopted its first Ethics Law, Act No. 1056, 1973 Alabama Acts, to the surprise and dismay of many in the Legislature.

The process began uneventfully enough with the introduction of Senate Bill 1 by Senator George Lewis Bailes, Jr. of Jefferson County as its lone sponsor. What happened next could only be described as reckless at best and Machiavellian at worst. Senator Bailes' bill passed the Senate on May 1, 1973, with only two dissenting votes. The bill closely resembled model ethics legislation that had been drafted by Common Cause in Washington. The House of Representatives then took up the bill and added some 16 amendments. Thus began the game of "chicken" with the House raising the ante on the Senate with the hope—and full expectation—that the Senate would kill the bill. Unbelievably, the Senate adopted the amendments in their entirety and sent the legislation to the Governor for final action. Governor George C. Wallace signed the bill into law the next day, September 15, 1973.

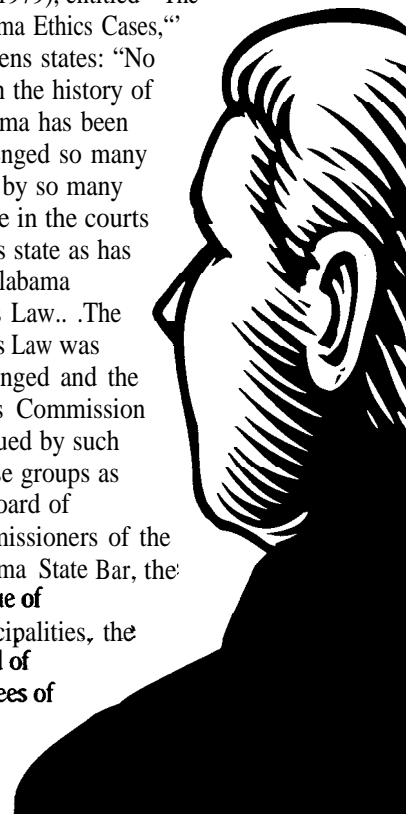
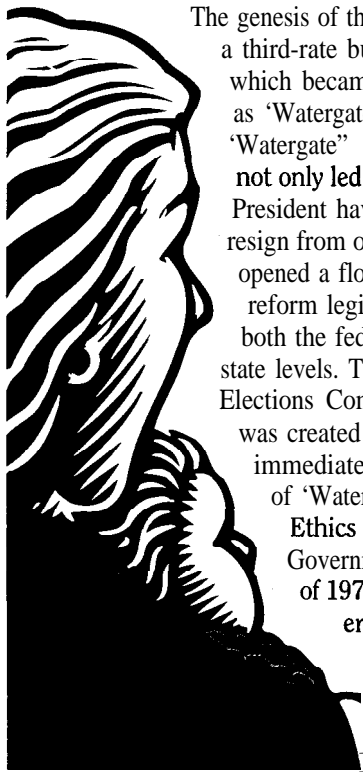
In his wonderful law review article about the legislative history of the adoption of the Ethics Law, "The Alabama Ethics Act—Milestone or Millstone," 5 *Cumb.-Sam. L. Rev.* 183 (1974), Melvin G. Cooper, the Commission's first executive director, shared a marvelous quote from a veteran senator who had told him: "Mr. Cooper, your Ethics Commission is a red-headed step-child with ugly freckles, bow legs, big nose, and many warts which is hated by its father and despised by its mother, both of whom kept hoping for an abortion which never took place." In spite of this, the newly-enacted law was viewed as the best such law in the country at that time and was used as a model for other

states as they developed their own ethics laws.

Immediate Legal Challenges

The ink from Governor Wallace's signature was barely dry before the first lawsuit was filed on September 18, 1973, challenging the constitutionality of one provision of the new Ethics Law. This was only the first of almost 20 such lawsuits challenging the law in every imaginable way. The definitive—and excellent—statement on these legal challenges was authored by William T. Stephens, who served as chief of the civil division in the Office of the Attorney General and who defended the Ethics Commission and the Ethics Act in each of these matters. In his article, found at volume 10, number 2, *Cumb. L. Rev.*

317 (1979), entitled "The Alabama Ethics Cases," Stephens states: "No law in the history of Alabama has been challenged so many times by so many people in the courts of this state as has the Alabama Ethics Law... The Ethics Law was challenged and the Ethics Commission was sued by such diverse groups as the Board of Commissioners of the Alabama State Bar, the League of Municipalities, the Board of Trustees of the



University of Alabama, and the Alabama State Employees Association.”

The litigation of all of these cases essentially amounted to a “holy war” against the Act and the Commission. Emotions ran as high as the stakes. It was extremely contentious and intense. But, in the end, the act was upheld and the Commission began to carry out its charge.

The first challenge was neither unexpected nor difficult to dispose of. It was filed in Federal District Court in Montgomery by the editor of *The Birmingham Times* and challenged the constitutionality of Section 14 of the Ethics Law. This section prohibited any member of the news media from attending legislative sessions if they failed to register with the Ethics Commission and receive a pass for such attendance. The obvious basis of the lawsuit was that Section 14 violated the first amendment guarantee of freedom of the press. The case was heard by a three-judge panel and the opinion, written by Judge Frank M. Johnson, Jr., held that Section 14 was unconstitutional and enjoined its enforcement.

A more serious challenge followed with the filing of seven lawsuits over a six-week period challenging the constitutionality of the Ethics Law. Specifically, these lawsuits questioned whether the requirement that statements of economic interests be filed annually was an infringement on the fourth amendment right of privacy. Among the plaintiffs in these lawsuits were: the Board of Commissioners of the Alabama State Bar, the members of the Court of the Judiciary and the members of the Judicial Compensation Commission; the League of Municipalities and the Association of County Commissioners; the Board of Trustees of the University of Alabama; and the Alabama State Employees Association. Temporary restraining orders and preliminary injunctions were issued in all of the cases, oftentimes *ex parte*, restraining the Commission from enforcing the Ethics Law.

Quoting from the Stephens article, *supra*, “The preliminary injunction hearings were fairly uniform. In each case, members of the plaintiff class testified that they would resign their positions rather than comply with the provisions of the Ethics Law. Each testified that he thought that the financial disclosure requirements of the Ethics Law invaded

his right of privacy. Each forecast doom for the particular governmental entity with which he was associated. According to testimony, state, county, and local government would come to a screeching halt unless the court enjoined application of the Ethics Law.”

The Commission’s counsel argued that “the alleged injuries . . . simply did not constitute cognizable legal injury to the individual plaintiffs, that the forecast of mass resignations was merely speculation, and that, even if such resignations did occur, sufficient numbers of competent people resided in the affected cities, counties, and the state to replace the persons who resigned.” (Stephens, *supra*) The Commission also argued that the benefits derived from the Ethics Law such as “honest government and public confidence in the integrity of governmental officials, far exceeded whatever forecast ‘injuries’ the plaintiffs had alleged.” (Stephens, *supra*)

It was the intent of the plaintiffs that the League of Municipalities/Association of County Commissioners’ case be the test case. The attorneys for both groups had been preparing for months their challenge to the constitutionality of the law. However, the Commission felt that its strongest case was against the Alabama State Employees Association, so they filed a motion for summary judgment in the State Employees Association case soon after it was filed, but before attorneys for the League/County Commissioners could proceed in their case. The Commission’s counsel also filed a motion to stay any further proceedings in all other causes pending the outcome of the State Employees Association case.

After oral argument, briefs and consideration of the record from the preliminary injunction proceedings, Judge Eugene Carter deliberated for several weeks and then entered an order upholding the constitutionality of the Ethics Law and its application to state employees, ruling against the State Employees Association on all issues. “The first and most significant case, the test case, had been won. The Ethics Law was constitutional.” (Stephens, *supra*)

The plaintiffs in the other cases and those cases which followed had been dealt a serious blow. As the cases proceeded to trial there were some minor, and oftentimes short-lived, victories on

behalf of the plaintiff groups, but for the most part, the Ethics Law was upheld, the Commission began its work and the Ethics Law was enforced. As a result of the League/County Commissioners case, the Legislature amended the Ethics Law, in 1975, to clearly include county and municipal officials and employees within the coverage of the law.

Space constraints prevent me from doing an exhaustive summary of the legal challenges to the Ethics Law. For those of you interested in the blow-by-blow description of these legal skirmishes, I highly recommend that you read William T. Stephens’ outstanding law review article, *supra*.

I might also add that not every legal challenge to the Ethics Law was fought out in the courtroom. Each time the Legislature met over those years immediately following the passage of the law, there were bills introduced to repeal the law and abolish the Commission. There were efforts to “sunset” the Commission and efforts to limit the Commission through the appropriations process. The Commission was always fortunate to have a core group of legislative supporters who prevented these efforts from being successful. To those supporters, the Commission and the citizens of this state are forever indebted.

Commissioners and Staff

The Ethics Law provided for the creation of a five-member Commission, “each of whom shall be a fair, equitable citizen of this state and of high moral character and ability.” Throughout its history, the Ethics Commission has truly been blessed to have served as Commissioners 29 private citizens (See Chart on page 266), who came from all walks of life: business, labor, religion, law, medicine and other professional endeavors, education and civic leaders. These Commissioners reflected the great diversity of Alabama and, no matter what their political affiliations or personal allegiances might be, they rose to the very highest levels of the responsibility that had been thrust upon them to fairly, equitably, impartially and in an absolutely nonpartisan manner determine the outcome of the issue at hand. They have

Ethics Commission Commissioners

Name	Occupation	Years Served
James H. Anderson	Attorney	1986-1992
Whit Armstrong	Banker	1991-1994
Dr. George E. Bagley*	Exec. Sec. Alabama Baptist Conv.	1973-1977 &1978-1987
Bester Bonner	College Professor	1977-1981
Jack W. Boykin	Businessman	1983-1988
Camille S. Butrus	Civic Volunteer	1994-1999
H. Dean Buttram, Jr.	Attorney, Federal Judge	1992-1998
Donald Comer, III	Businessman	1973-1976
Neil O. Davis	Newspaper Publisher/College Professor	1979-1984
Russell Jackson Drake	Attorney	1998-2003
Connie Entrekin	AFL-CIO Official	1973-1975
Henry B. Gray, III	Cattle Rancher/Alabama Dept. Head	1993-1998
Dr. James J. Hicks	Doctor	1983-1989
Maynard Layman	Newspaper Publisher Asst.	1977-1980
Alto Lee, III*	Attorney	1973-1978
Helen Shores Lee	Attorney	1995-2000
William H. Lovin	Maintenance Supervisor, Amoco Chem.	1981-1985
Frank L. Mason	Businessman	1992-1995
Lee McGriff	Insurance Executive	1989-1993
Dr. Sandra K. M. McLeod	Junior College President	1985-1992
Lewis G. Odom, Jr.	Attorney	1998-2002
James T. Purse11	Businessman	1992-1998
Edward C. Sherling, Jr.	Businessman	1981-1986
Reverend John Vickers	Minister	1979-1982
J. Ray Warren	State Employee	1987-1992
John H. Watson	Businessman	1998-2001
Adolph Weil, Jr.*	Businessman	1979-1983
Dr. Leslie S. Wright*	University President	1973-1979
Dr. Cordell Wynn	College President	1984-1991

*Deceased

oftentimes undertaken their task in the face of great adversity and have provided great service to the Ethics Commission and to the citizens of Alabama that far exceeds their minuscule compensation of \$50 per monthly meeting.

The Commission was aided in its task by strong and dedicated staff members who also faced all manner of resistance and adversity as they set out to enforce the law.

The first Executive Director of the Commission, Melvin G. Cooper, was hired in January 1974. His task was to literally start the Commission operation from scratch. There was no office space, no telephone, no stationery and no staff. Faced with the legal and legislative hurdles I mentioned earlier, these obstacles were the least of his worries. But, obstacles they were. There were times when the small staff felt there was no way to get the job done. Funding was extremely tight and not only did the Commission operate for several years with no investigator, it often found itself unable to purchase routine, but necessary, office supplies. Nonetheless, with a steady hand

on the rudder and a large measure of perseverance, Melvin Cooper led the Commission staff for more than 20 years until his retirement in 1994.

Melvin Cooper was succeeded by his long-time Assistant Director Howard McKenzie, who served as acting executive director in 1994 until the new executive director was named. McKenzie provided continuity and kept the ship on course during his tenure. Upon the selection of the new Executive Director, E. J. "Mac" McArthur, in the fall of 1994, McKenzie retired from the Ethics Commission after 17 years of distinguished service.

The three hallmarks of the McArthur era at the Ethics Commission are 1) the passage of a major revision of the Ethics Law in 1995, 2) the tripling of the legislative appropriation for the operation of the Commission, and 3) the hiring of an outstanding group of staff members who are well-equipped to handle their assigned tasks. When Mac McArthur resigned to

pursue another endeavor in February 1997, he was succeeded very ably by Commission General Counsel Hugh R. Evans, III. Under Hugh Evans' leadership, the staff and Commission never missed a beat as the Commission conducted their search for a new director of the Commission. My first official act as director was to appoint Hugh to the additional position of assistant director, as well as his role as general counsel.

On April 26, 1997, I began my duties as director of the Ethics Commission—only the third permanent director over the 25-year history of the Commission. At the time of my selection, and in the period since then, I have diligently strived to carry out my pledge to the Commission that I would maintain the very highest standards of fairness, impartiality and nonpartisanship in the matters that come before the Commission. At the end of my service here, it is my sincere hope that everyone would agree I had achieved that goal.

Major Cases Under the Ethics Law

Over the 25-year history of the Ethics Commission countless public officials and employees, ranging from governors, legislators, cabinet officials to sheriffs, circuit clerks, county commissioners, mayors to rank-and-file employees of various cities, counties or the state have run afoul of the Ethics Law. The following are a few of the major cases involving public officials:

- A Former Governor Guy Hunt: Hunt was convicted and removed from office in 1993 for using \$200,000 from his 1987 inaugural fund for his personal use. Although the verdict was upheld in state and federal appeals, the Alabama Board of Pardons and Paroles pardoned Hunt based on their belief that he was innocent.
- A Former State Treasurer Melba Till Allen: Allen was convicted in 1978 for using her public office to obtain bank loans for a personal business venture. She also failed to report the loans on her Ethics financial disclosure forms. She was sentenced to three years in prison.
- A Former Public Service Commission President Juanita McDaniel: She was convicted in 1980 for tiling false expense requests and sentenced to seven months in prison.
- A Former Insurance Commissioner Jimmy Dill: Dill was convicted in 1997 for accepting \$175,000 from his daughter who was in the insurance business and subject to her father's regulation. Dill, who had been appointed by former Governor Jim Folsom, was no longer serving in his state position when the Ethics case began. The verdict in the case was overturned by the Alabama Court of Criminal Appeals.
- A Industrial Relations Director Dottie Cieszynski: Cieszynski was fined \$3,000 in 1996 for using state employees for her personal errands and a state car for personal use. She was appointed to her cabinet post by former Governor Fob James.
- A Selma Mayor Joe Smitherman: Mayor Smitherman was fined \$4,000 in 1998 for using his city automobile

to make personal trips to the beach and to other destinations.

- A Former Birmingham Water Board Chairman Horace Parker: Parker was convicted in 1998 for arranging to get a water main upgrade done on the street on which he lives in Gardendale to improve the water pressure for his lawn sprinkler system. Parker also voted as a member of the Water Board to approve the work being done.

A Current Perspective

In 1999, we daily see examples of ethically questionable conduct in Washington, in state government and in our city and county governments. These examples involve public officials and employees from the President of the United States on down to the local water board. In Alabama, the revised 1995 Ethics Law provides us with major new tools to deal with the matters which come before the Ethics Commission: a revolving-door provision, the authority to initiate our own investigations, whistle-blower protection and it establishes a system for fines and restitution for minor violations, among many other new provisions. The revised law is much more workable and understandable than it previously was which makes our job much easier.

In the period I have served as director, our operational philosophy has been one of establishing clear and reliable precedent and of education and prevention. In every possible way, we are taking the Commission and the law to the people. By that I mean, we are conducting educational programs (some 77 last year or 1.5 per week) at every opportunity. We recently conducted a seminar on the Ethics Law for several cities and towns in the Quad-cities area which was attended by nearly 100 mayors, council members, police chiefs, fire chiefs, etc., as well as rank-and-file employees. We now distribute a digest of the Commission's opinions and a quarterly newsletter to the governor and other constitutional officers, cabinet officials, department, agency, board and commission directors, members of the legislature, the Association of County Commissioners and the League of Municipalities.

I am also extremely proud of the fact

that we have eliminated our backlog of advisory opinion requests and we are working to significantly reduce the length of time required to conduct an investigation into a complaint filed with the Commission. The Commission rendered 69 opinions last year and had 328 complaints filed. We also are striving to ensure that those 26,000 public officials and employees required to file Statements of Economic Interest do so properly and in a timely manner. The same is true for the 561 lobbyists and 681 principals who are registered with the Commission.

After 25 years, have we eliminated unethical behavior? Clearly not, but I would strongly argue that the Ethics Law has made a difference—a real difference—in how our governmental business, the people's business, is conducted. I believe we as a people have a much better understanding of our ethical responsibilities and, for the most part, we adhere to them. Most public officials and employees realize today that they cannot use their public office or position for their personal gain or the gain of their family.

Do the citizens of Alabama get their money's worth as a result of our efforts? Absolutely. The Commission's budget is less than one-tenth of one percent of the state's General Fund Budget. The annual cost of operating the Commission for each of the 200,000 covered public officials and employees is \$4.69. The cost per citizen of the state is only 22 cents. What a tremendous bargain to ensure the integrity of our governments at every level throughout the state. ■



James L. Sumner, Jr. is the director of the Alabama Ethics Commission. He was appointed in April 1997. He holds an additional appointment as a deputy Attorney General.

He graduated from the University of Alabama in 1970 and Cumberland School of Law, University, in 1974.

He has served as assistant to the vice-chancellor for external affairs of the University of Alabama System, as vice-president/legislative affairs for the Alabama Hospital Association, and as executive assistant to the lieutenant governor and chief of staff, lieutenant governor's office, in addition to other corporate and governmental positions. He is a member of the American Bar Association and the Alabama State Bar.