



# STATE OF ALABAMA ETHICS COMMISSION



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February 3, 2021

## ADVISORY OPINION NO. 2021-02

Robert P. MacKenzie, III  
Reed R. Bates  
Starnes, Davis, Florie, LLP  
100 Brookwood Place, 7th Floor  
Birmingham, Alabama 35209

Conflict of Interest / Public Officials /  
Holding Two Public Positions

A member of the Alabama Board of Examiners of Assisted Living Administrators may also serve as a Board member of the Alabama Assisted Living Association without violating the Ethics Act.

Dear Messrs. MacKenzie and Bates:

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 as have been presented to this Commission are as follows:

Two members of the Alabama Assisted Living Association (AALA) recently joined the Alabama Board of Examiners of Assisted Living Administrators. (BOEALA). Members of the BOEALA are appointed to their position by the Governor. The AALA is a non-profit organization whose board members serve as an advisory council to the BOEALA. The AALA does not have the authority to oversee the day-to-day operations of the BOEALA. The Attorney General's Office has previously considered whether Alabama law prohibits someone from serving on both the

BOEALA and the AALA (Boards).<sup>1</sup> The Attorney General's Office determined that service on both Boards was not prohibited by Alabama law. However, the Attorney General's Office did not comment on whether the Ethics Act would prevent service on both Boards. This Commission has not previously addressed whether a member of the BOEALA may also serve on the AALA.

### **QUESTION PRESENTED**

May a person who serves on the BOEALA also serve as a Board member of the ALAA?

### **ANALYSIS**

Members of the BOEALA are public officials by virtue of their appointment to the position by the Governor.<sup>2</sup> The AALA is a non-profit 501(c)4 and their members are elected from the providers who are members of the AALA. Therefore, the members of the AALA Board are not public officials and are not governed by the Ethics Act. The Ethics Act prohibits public officials from using their official position to obtain personal gain for themselves, their families, or any business with which they are associated.<sup>3</sup> The members of the BOEALA may not use their position to vote on or influence official action to obtain personal gain or use any official resources, including personnel, for the private or business benefit of any person.<sup>4</sup> The AALA Board serves only as an advisory council to the BOEALA and the BOEALA has no authority

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<sup>1</sup> Attorney General Opinion 2008-50

<sup>2</sup> Ala. Code § 36-25-1(27): 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 17-13-40. See also Advisory Opinion 2017-03.

<sup>3</sup> Ala. Code § 36-25-5(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.

<sup>4</sup> Ala. Code § 36-25-5(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. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.

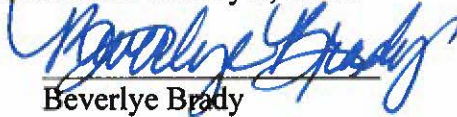
over the AALA. For that reason, there is no provision in the Ethics Act that would prohibit a person who serves on the BOEALA from also serving as a Board member of the ALAA. As a BOEALA Board member, however, that person could not use his or her position to benefit themselves, their family or any business with which they are associated.

### CONCLUSION

A member of the Alabama Board of Examiners of Assisted Living Administrators may also serve as a Board member of the Alabama Assisted Living Association without violating the Ethics Act.

### AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on February 3, 2021.

  
Beverlye Brady  
Chair  
Alabama Ethics Commission