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ADVISORY OPINION NO. 2003-51

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Conflict Of Interest/Senior Public Health
Environmentalist In Marion County
Operating Catering Business On His Own
Time

A Senior Public Health Environmentalist may operate a catering business outside the jurisdiction in which he conducts inspections; provided, that all activities relating to the catering business are performed on his own time; and that there is no use of public equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in performing the functions of his catering business or in obtaining opportunities for his catering business.

This opinion is based on the fact that the Senior Public Health Environmentalist will inspect exclusively in Marion and Walker Counties and, at no time, will the Senior Public Health Environmentalist, nor a subordinate, inspect in Franklin County. Should these facts change, the Senior Public Health Environmentalist should request another opinion from the Commission.

John R. Wible, Esq.
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Dear Mr. Wible:

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 a Senior Public Health Environmentalist in Marion County operate a catering business on his own time?

FACTS AND ANALYSIS

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

John R. Wible is General Counsel for the Alabama Department of Public Health. The Department of Public Health requests an Advisory Opinion as to the permissibility of the secondary business to be engaged in by a state employee based on the following fact situation.

The Department employee in question, Jamie Medley, is a Senior Public Health Environmentalist in Marion County, and has been smoking turkeys and cooking other foods for family, friends, churches and others voluntarily at no charge for several years. He has now decided to construct a building and operate a small, part-time catering business and charge for the service in Franklin County where he lives, but does not work nor has any jurisdiction.

Mr. Medley is responsible for, among other things, food service inspections in Marion County, but not in Franklin County where the business would be located, although, at times, he could be required to cross into Franklin County to make inspections. The business would require a permit and inspections by members of the Franklin County Health Department. Franklin and Marion Counties are located in the same public health area, and Mr. Medley would in some sense be a coworker of the food service inspectors in Franklin County, though presently in no supervisory position over them. The Department has some concerns that such coworkers are called upon to periodically train together, attend staff meetings together and attend area meetings together. The Department is concerned that this close association could create a potential for, or at least a public perception of a conflict of interest.

Upon further inquiry, the Department of Public Health has determined that Mr. Medley inspects exclusively in Marion and Walker Counties and, at no time, would he inspect food establishments or processors in Franklin County. The Department has further determined

that Mr. Medley has no subordinates, so none would be inspecting food processors or establishments in Franklin County. The Department states that Mr. Medley's supervisor is based in Marion County and has no subordinates inspecting food establishments in Franklin County.

Mr. Medley states that the catering would be done in the evenings and on weekends, and that no work time, state equipment or facilities would be used. Mr. Medley further states that he would comply with all rules for food service establishments, and would not be involved in the inspection process nor have any supervisory authority over those who inspect his business. In an effort to avoid any conflict, he would not engage in or solicit business in Marion County.

The Alabama Ethics Law, Code of Alabama, 1975, 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 36-25-1(2) defines a business with which the person is associated as:

"(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) defines a conflict of interest as:

"(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:

"(b) 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."

The Ethics Law allows public employees and public officials to have outside employment, provided a conflict of interest does not exist.

In the facts as provided, it would not be a conflict of interest for an employee of the Alabama Department of Public Health to operate a catering business outside the jurisdiction in which he inspects.

Based on the facts as provided and the above law, a Senior Public Health Environmentalist may operate a catering business outside the jurisdiction in which he conducts inspections; provided, that all activities relating to the catering business are performed on his own time; and that there is no use of public equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in performing the functions of his catering business or in obtaining opportunities for his catering business.

Further, this opinion is based on the fact that the Senior Public Health Environmentalist will inspect exclusively in Marion and Walker Counties and, at no time, will the Senior Public Health Environmentalist, nor a subordinate, inspect in Franklin County. Should these facts change, the Senior Public Health Environmentalist should request another opinion from the Commission.

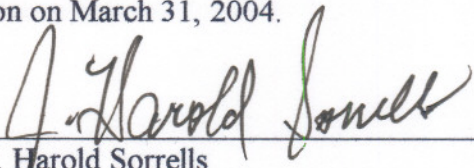
CONCLUSION

A Senior Public Health Environmentalist may operate a catering business outside the jurisdiction in which he conducts inspections; provided, that all activities relating to the catering business are performed on his own time; and that there is no use of public equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in performing the functions of his catering business or in obtaining opportunities for his catering business.

This opinion is based on the fact that the Senior Public Health Environmentalist will inspect exclusively in Marion and Walker Counties and, at no time, will the Senior Public Health Environmentalist, nor a subordinate, inspect in Franklin County. Should these facts change, the Senior Public Health Environmentalist should request another opinion from the Commission.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on March 31, 2004.



J. Harold Sorrells
Chair
Alabama Ethics Commission