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ADVISORY OPINION NO. 2006-10

Ms. Augusta Cash
Retired Head Injury Services Coordinator
Alabama Department of Rehabilitation Services
2012 Lakemoor Drive
Birmingham, Alabama 35244

Revolving Door/Retired Head Injury Services Coordinator For The Alabama Department Of Rehabilitation Services (ADRS) Accepting Limited Part-Time Employment With The Alabama Head Injury Foundation (AHIF)

A retired Head Injury Services Coordinator for the Alabama Department of Rehabilitation Services (ADRS) may accept part-time employment with the Alabama Head Injury Foundation (AHIF), when she had no control or influence on budgets or contracts between the Alabama Department of Rehabilitation Services and the Alabama Head Injury Foundation, nor was she involved in the direct regulation, audit or investigation of the Alabama Head Injury Foundation on behalf of the Alabama Department of Rehabilitation Services.

For a period of two years after her retirement from the Alabama Department of Rehabilitation Services, the retired Head Injury Services Coordinator may not represent the Alabama Head Injury Foundation in any business dealings between the Foundation and the Department of Rehabilitation Services.

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Dear Ms. Cash:

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 retired Head Injury Services Coordinator for the Alabama Department of Rehabilitation Services accept limited part-time employment with the Alabama Head Injury Foundation?

FACTS AND ANALYSIS

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

Augusta Cash worked for the Alabama Department of Rehabilitation Services (ADRS) for approximately 37 years and retired at age 62 on October 1, 2005. She was a Rehabilitation Counselor for the ADRS during her first approximate 22 years of employment. She was Head Injury Services Coordinator for ADRS from 1990 until her retirement in October 2005. She states she has developed expertise in delivery of rehabilitation services for people with TBI (traumatic brain injury) through experience with ADRS consumers, attendance at workshops and various other educational and training opportunities.

She states that her primary responsibility was supervision of six rehabilitation counselor TBI specialists employed as state employees by ADRS, who provide rehabilitation services and counseling to people with TBI and their families. She states that these rehabilitation counselors are located throughout the state. She provided case service supervision, training and assistance with managing ADRS case service financial allotment for these six rehabilitation counselors. Additional responsibilities included provision of case consultation to other ADRS staff regarding TBI issues. She also worked with other state agencies and organizations such as ADPH, Mental Health, Alabama Disabilities Advocacy Program, Department of Education/Special Education, AHIF, United Cerebral Palsy, Easter Seals, Independent Living Centers and others to provide TBI training for staff and assist with developing appropriate services for people with TBI. She collaborated and coordinated frequently with AHIF, the primary non-profit provider of services for people with TBI on issues relating to consumer referral procedures, service delivery and service coordination, counseling and rehabilitation practices, clinical approaches and training on both an individual consumer level and programmatic level. She states that she never had any control or influence on budgets or contracts between ADRS and AHIF. She also was not involved in the direct regulation, audit or investigation of the Alabama Head Injury Foundation.

The primary financial relationship between ADRS and the Alabama Head Injury Foundation involves funding for AHIF by the Alabama Impaired Driver's Trust Fund (IDTF), and the contract between ADRS and AHIF for that funding. AHIF is a 501(c)3 consumer advocacy organization whose mission is "to improve the quality of life for survivors of traumatic brain injury and their families." Background of the ADRS-AHIF relationship: the IDTF and IDTF Board were established by the Alabama Legislature in 1992. Board membership was also established in that legislation. Members are: Alabama Department of Insurance, DHR, Alabama Hospital Association, Coalition of Citizens with Disabilities, UAB Injury Control Research Center, House of Representatives, State Senate, Alabama Head Injury Foundation, Epilepsy Foundation, Department of Education, Developmental Disabilities Planning Council, ADPH, Alabama Head Injury Task Force, Medical Association of Alabama, Medicaid, Department of Mental Health/Mental Retardation and the Governor's Office. In 1993, the Legislature passed Act 93-323, imposing an additional fine of \$100 on persons convicted of DUI and instructing the Board to "investigate needs of survivors of neurotrauma with TBI and spinal cord injury, identify gaps in services and establish guidelines for dispersing IDTF monies." The Legislature also designated ADRS "as the agency to disperse monies from the IDTF in accordance with priorities and criteria established by the Board." The IDTF Board has established specific amounts of money to fund designated services provided by the AHIF and ADRS. The amounts of funding and the services provided are established by the IDTF Board and are NOT controlled or negotiated by ADRS. The Board meets quarterly and reviews Fund status, income, expenditures and service/program performance. The IDTF receives approximately \$1.2 million annually. ADRS contracts with AHIF for the specified amount of money for designated services as instructed by the IDTF Board. ADRS legal services reviews the contract to insure compliance with state contracting requirements, and ADRS accounting department has conducted two (to the best of her belief) audits of AHIF, with no known problems found. Ms. Cash reiterates that she has not been involved with either contract review by ADRS legal services or financial audit/review by ADRS accounting department.

Additional contracts involving funding between ADRS and AHIF have been related to a Rehabilitation Services Demonstration grant in 1992 and Health Resources Services Administration (HRSA) TBI State grants in 1997, 2002, 2003, 2004 and 2006 for the purpose of developing and improving the system of services for children, youth and adults with TBI and their families. As the primary advocacy organization for people with TBI and recipient of funding for services from the Alabama Impaired Driver's Trust Fund, AHIF is a component of the system of services for people with TBI in Alabama. ADRS, through these HRSA grants has contracted with AHIF for specific grant activities related to system development, particularly related to consumer involvement/input as required by the HRSA TBI State grant program. Again, related to these grant contracts, Ms. Cash has had no control or influence on budgets or the contracts between ADRS and AHIS. She was not involved in the direct regulation, audit or investigation of the Alabama Head Injury Foundation.

The purposed work for AHIF would involve research, primarily via Internet and contact by phone, of other states' and organizations' traumatic brain injury service delivery systems, policies, programs and approaches that may be replicated in Alabama, reviewing and organizing this information, compiling and writing reports, assisting with coordination of seven statewide consumer focus groups to obtain consumer input, developing consumer surveys, compiling data and information obtained and writing reports of results.

Ms. Cash would like to accept limited part-time (approximately 80 hours a month) employment with the Alabama Head Injury Foundation in June 2006. Employment would involve part-time work by way of a contract to perform activities related to a Health Resources Services Administration grant for systems development for people with traumatic brain injury and their families. This \$100,000 grant is awarded to ADRS and a portion is contracted to AHIF for specific system building activities. Ms. Cash would have no involvement with distribution of any funds to individuals, agencies, organizations or entities, and would not represent herself or her new employer in any business dealings with the Alabama Department of Rehabilitation Services.

The Alabama Ethics Law, 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 36-25-13(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.”

Section 36-25-13(d) states:

“(d) No public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business, corporation, partnership, or individual shall within two years of his or her departure from such employment solicit or accept employment with such private business, corporation, partnership, or individual.”

The “Revolving Door” provisions of the Ethics Law prohibit certain activities by public officials and public employees for a period of two years after leaving their public employment. Specifically, a public official or public employee may not, for a period of two years after leaving employment with the public entity, have business dealings back with that public entity on behalf of either himself/herself, his or her new employer or clients, for a period of two years. It does not matter what the former public official’s or public employee’s job responsibilities were while employed with the public entity, nor does it matter what his or her current activities are. It is an across-the-board prohibition that applies to everyone in the public sector equally.

In addition, if an individual is involved in the direct regulation, audit or investigation of a private entity, or is involved in any contractual dealings between the public entity and the private entity, he or she may not, for a period of two years, accept employment with that private entity.

Based on the facts as provided, it would not violate the “Revolving Door” provisions of the Alabama Ethics Law for Ms. Cash, as a retired Head Injury Services Coordinator for the Alabama Department of Rehabilitation Services to accept part-time employment through a contract with the Alabama Head Injury Foundation, when she was not involved in any aspect of

the contractual process between the Department of Rehabilitation Services and the Head Injury Foundation, where she was not involved in the direct regulation, audit or investigation of the Alabama Head Injury services, and where her part-time employment with the Head Injury Foundation will not involve any interaction back with the Alabama Department of Rehabilitation Services.

Based on the facts as provided and the above law, a retired Head Injury Services Coordinator for the Alabama Department of Rehabilitation Services may accept part-time employment with the Alabama Head Injury Foundation—

- 1) when she had no control or influence on budgets or contracts between the Alabama Department of Rehabilitation Services and the Alabama Head Injury Foundation,
- 2) nor was she involved in the direct regulation, audit or investigation of the Alabama Head Injury Foundation on behalf of the Alabama Department of Rehabilitation Services; however,
- 3) for a period of two years after her retirement from the Alabama Department of Rehabilitation Services, the retired Head Injury Services Coordinator may not represent the Alabama Head Injury Foundation in any business dealings between the Foundation and the Department of Rehabilitation Services.

CONCLUSION

A retired Head Injury Services Coordinator for the Alabama Department of Rehabilitation Services may accept part-time employment with the Alabama Head Injury Foundation, when she had no control or influence on budgets or contracts between the Alabama Department of Rehabilitation Services and the Alabama Head Injury Foundation, nor was she involved in the direct regulation, audit or investigation of the Alabama Head Injury Foundation on behalf of the Alabama Department of Rehabilitation Services.

For a period of two years after her retirement from the Alabama Department of Rehabilitation Services, the retired Head Injury Services Coordinator may not represent the Alabama Head Injury Foundation in any business dealings between the Foundation and the Department of Rehabilitation Services.

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AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on June 7, 2006.

A handwritten signature in cursive script, reading "Linda L. Green", written over a horizontal line.

Linda L. Green
Chair
Alabama Ethics Commission