



STATE OF ALABAMA ETHICS COMMISSION



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September 1, 2016

ADVISORY OPINION NO. 2016-26

Ms. Elizabeth Thomson Bressler
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State of Alabama Banking Department
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Revolving Door/Former Member Of
Legislature Appointed As Banking
Department Superintendent Interacting With
Legislature On Behalf Of Banking
Department

Neither Ala. Code §36-25-13, nor the prohibitions of Ala. Code § 36-25-23(a), prohibits the Superintendent of the State Banking Department from representing the Banking Department before the Alabama Legislature consistent with his official duties, or before any state or local government, officials or bodies, provided that in doing so he not use the opportunity to personally benefit himself, his family, or any business with which he is associated, which is a prohibition that applies to all public officials when performing their official duties.

The Superintendent of the Alabama State Banking Department is by definition not a "lobbyist" when he "provides or

communicates, or both, information relating to policy or positions, or both, affecting the governmental agencies which he or she represents.” Therefore, when he does this he is not “serving for a fee as a lobbyist” in violation of 23(a).

Dear Ms. Bressler:

The Alabama Ethics Commission is in receipt of your request for a formal Advisory Opinion of this Commission, and this opinion is rendered pursuant to that request.

QUESTIONS PRESENTED

1. Is a former member of the Alabama House of Representatives who has resigned his office before the end of his elected term and been appointed Superintendent of the Alabama State Banking Department prohibited by the Ethics Act from representing the Banking Department in communications with legislators – whether initiated by a legislator or by the Department – regarding Banking Department matters and banking issues when Alabama law contemplates that the Superintendent is to have broad responsibilities to lead and represent the Department and oversee banking regulations in Alabama?
2. Is a former member of the Alabama House of Representatives who has resigned his office before the end of his elected term and been appointed Superintendent of the Alabama State Banking Department prohibited by the Ethics Act from representing the Banking Department in communicating and working with other state and local government officials and bodies – whether initiated by those government officials or by the Department – as part of his Superintendent duties when Alabama law contemplates that the Superintendent is to have broad responsibilities to lead and represent the Department and oversee banking regulations in Alabama?

FACTS AND ANALYSIS

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

Mike Hill was recently appointed by Governor Robert Bentley as the Superintendent for the State Banking Department. The Superintendent for the State Banking Department is a statutorily created position with the powers and responsibilities set out at 5-2A-1 et seq. Prior to his appointment, Mr. Hill served as a member of the Alabama House of Representatives.

The State Banking Department is a State agency that regulates banks, trust companies and other financially-related licensees operating in Alabama. Currently, there are 115 state-chartered banks, three independent state-charted trust companies, and approximately 13,000 licensees with the Department's Bureau of Loans subject to regulation by the Department.

The Banking Department Superintendent serves as a member of the Governor's cabinet. The Superintendent also serves as Chief Executive Officer of the Department and oversees the Department in administering Alabama's Banking laws. The Superintendent has a wide-range of statutory responsibilities, including the authority to assess banks to fund operations of the Department, expand banking powers of Alabama banks, promulgate and interpret banking regulations, take advantage of changing technologies with respect to banking, correct unsafe and unsound banking practices, and provide reports on the Department's activities.

Given the Department's exclusive responsibility to administer the State's Banking laws, the Department anticipates that Mr. Hill will be at times called on by individual legislators, the Legislature and its committees, and other governmental entities regarding Department matters. The Banking Department's concern is whether the interaction between Mr. Hill, as Banking Superintendent, and the Legislature would violate the "Revolving Door" provisions of the Alabama Ethics Act.

As a person appointed to a position at the state level of government, Mr. Hill is a "public official." Ala. Code § 36-25-1(27). Ala. Code § 36-25-13(a) prohibits a public official from serving for a fee as a lobbyist, or otherwise representing clients, including his or her employer, before the board, agency, commission, department or legislative body of which he or she is a former member. This prohibition extends for two years after they leave such membership.

In addition, Ala. Code § 36-25-23(a) prohibits public officials who resign or otherwise leave their public position prior to the expiration of their terms from "serving for a fee as a lobbyist" or otherwise representing clients including their employer before any legislative body at any level of government, not only for two years, but also for the additional period of their unexpired term.

Excluded from the definition of a "lobbyist" is "[a] state governmental agency head or his or her designee who provides or communicates, or both, information relating to policy or positions, or both, affecting the governmental agencies which he or she represents." Ala. Code § 36-25-1-(21)(b)(6). Therefore, Mr. Hill would not be "serving for a fee as a lobbyist" in violation of 23(a) when he does this.

The application of the "Revolving Door" statute in a similar context was most recently addressed in Advisory Opinion No. 2014-01. In that Opinion, the Commission pointed out that the "Revolving Door" statute does not specifically address the issue of a public employee changing jobs within the public sector. Likewise, it does not address the issue of public officials

changing jobs within the public sector. In AO2014-01, however, the Commission found that the intent of Section 13 was not to prohibit a public employee who leaves one State agency from representing their new employer before their former State agency. The Commission held, “The ‘Revolving Door’ provisions of the Alabama Ethics Law do not prohibit the former State Trails Coordinator and Recreation and Conservation Programs Manager with the Alabama Department of Economic and Community Affairs (ADECA) from interacting with ADECA on behalf of the Department of Conservation and Natural Resources, as there is no personal gain involved, nor is there a financial benefit to the current employer.”

The Opinion went on to hold, “A former ADECA Programs Manager may serve with the Department of Conservation and Natural Resources and interact with ADECA on behalf of the Department of Conservation and Natural Resources, as there is a public interest involved and there is no personal gain to the former ADECA employee or the current employer.”

Based on the same reasoning, neither the Revolving Door statute, nor 23(a), prohibits Mr. Hill from representing the Banking Department as its Superintendent before the Legislature or state or local government. The Ethics Law is designed to prevent public officials and public employees from using their position in a manner that would provide a personal benefit to either themselves, a member of their family or a business with which they are associated. It is not designed to prevent a public official from exercising his or her statutory authority on behalf of the public whom he or she serves. See also, Lambert v. Wilcox County Commission, 623 So.2d 727 (Ala. 1993); AO 2015-15 (“Public officials and public employees who serve on boards, committees or commissions established to assist governmental entities in performing their functions, may vote and participate in issues coming before the board, committee or commission that directly affect the public entity that employs them or on which they serve, when the benefit is a public benefit and accrues to that public entity and, therefore, to the public which that entity serves. If, however, a matter comes before the boards which presents an opportunity for the members to materially benefit or affect their financial interests, they may not participate or vote on those items.”).

CONCLUSION

Neither Ala. Code §36-25-13, nor the prohibitions of Ala. Code § 36-25-23(a), prohibits the Superintendent of the State Banking Department from representing the Banking Department before the Alabama Legislature consistent with his official duties, or before any state or local government, officials or bodies, provided that in doing so he not use the opportunity to personally benefit himself, his family, or any business with which he is associated, which is a prohibition that applies to all public officials when performing their official duties.

The Superintendent of the Alabama State Banking Department is by definition not a “lobbyist” when he “provides or communicates, or both, information relating to policy or positions, or both, affecting the governmental agencies which he or she represents.” Therefore, when he does this he is not “serving for a fee as a lobbyist” in violation of 23(a).

AUTHORITY

By 4-0-1 vote of the Alabama Ethics Commission on September 1, 2016.



Jerry L. Fielding, Ret. Sr. Circuit Judge
Chair, Alabama Ethics Commission