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October 5, 2016

ADVISORY OPINION NO. 2016-31

The Honorable Clyde Chambliss, Jr.
Alabama State Senate, District 30
11 South Union Street, Suite 733
Montgomery, Alabama 36130

Revolving Door Prohibitions/Licensed Civil Engineer In Legislature Engaging In Private Practice Of Civil Engineering While Still In Office

Ala. Code § 36-25-23(a) does not prohibit a licensed Civil Engineer who serves in the Legislature from engaging in the private practice of civil engineering while still in office; however, he may not lobby any legislative body (state, county or local) on behalf of his employer without violating Section 23(a).

He may not use the fact that he is a State Senator in order to gain new clients (in other words, he may not trade on the office) without violating Section 5(a).

He must, as well, comply with the following sections: Ala. Code § 36-25-5.1 (subject to the exception found in Ala. Code § 36-25-1(34)(b)(10)); the prohibitions of Ala. Code § 36-25-7; Ala. Code § 36-25-11; Ala. Code §§ 36-25-13(a) and 13(b) as they relate to the City of Prattville; and Ala. Code §§ 36-25-23(a) and 23(c).

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Dear Senator Chambliss:

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.

QUESTION PRESENTED

Does Section 36-25-23(a) prohibit a licensed Civil Engineer from engaging in the private practice of civil engineering while serving as a member of the Alabama Senate?

FACTS AND ANALYSIS

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

Clyde Chambliss, Jr. is a licensed Civil Engineer who serves as a member of the Alabama Senate. He is engaged in the private practice of civil engineering with the firm of Chambliss Engineering, LLC, which was formed in May 2000. The sole member of the LLC is his wife, Tara, who is also a licensed Civil Engineer. Senator Chambliss is an employee of the LLC.

Before his election to the Alabama Senate in November of 2014, Senator Chambliss served as a member of the Autauga County Commission from November 1996 until the end of his term in November of 2008. He served as a member of the Prattville City Council from August 28, 2012 until his resignation on November 5, 2014, when he was elected State Senator. His four-year term of office as a member of the Prattville City Council, would have expired in August of 2016.

Before he became a State Senator, clients of his engineering firm included the Autauga County Commission, the Autauga County Water Authority, the Town of Autaugaville, the Town of Billingsley, the Town of Eclectic and the Town of Elmore. They are still clients of his engineering firm. His Statements of Economic Interests covering 2011 through 2015 show that while serving as a member of the Prattville City Council his clients remained steady. He has taken on no new public clients since he was elected to the Senate, and has, in fact, turned down clients.

Senator Chambliss does not ask the Commission to approve his doing work for any particular existing or new client. He simply asks whether he can engage in his chosen profession while simultaneously serving in the Alabama Senate without violating Ala. Code § 36-25-23(a).

Although his question is limited to Section 23(a), there are several other sections relevant to this issue such as Ala. Code § 36-25-5 (which prohibits use of office for personal gain for the public official, his or her family, or a business with which they are associated); Ala. Code § 36-25-5.1 (which prohibits soliciting or receiving a thing of value from a lobbyist, subordinate of a lobbyist, or a principal); Ala. Code § 36-25-7 (which prohibits the offer, receipt or solicitation of anything for the purpose of corruptly influencing official action); Ala. Code § 36-25-11 (which requires a public official to disclose contracts which are to be paid out of public funds and place them on file with the Commission within 10 days of their having been entered into); Ala. Code §§ 36-25-13(a) and 13(b) (which prohibits former public officials from representing their new private employers before the public body they were a member of for the remainder of their term plus two years); and Ala. Code § 36-25-23(c) (which prohibits a public official from soliciting anything other than a campaign contribution from a lobbyist).

The Commission gave informal advice to Senator Chambliss in April of 2015. At that time, we told him,

“While the current version of the Ethics Law does not prohibit you from engaging in the private practice of civil engineering, for a period of two years, you cannot contract with the City of Prattville to provide engineering services or otherwise represent a client, including your employer, before the City of Prattville, as your term with the City Council would not have expired until August 2016. Moreover, remember that as a current public official, you cannot use your position to obtain personal gain for you, your family or your business. Given that restriction, I will caution you against working as an engineer for any project or for groups that depend on, or benefit from, the actions of the Legislature, and remind you that you should avoid even the appearance of impropriety in your work as an engineer, given your official position.”

The informal opinion went on to point out that the advice given did not carry the legal protection that a formal opinion carries which is why he asks for this formal Advisory Opinion.

Senator Chambliss specifically asks his question with reference to Section 23(a). The language of Section 23(a) has generated confusion among those whom the Act affects because its language is inconsistent with what some say was the Legislature’s intent when passing it.

Section 36-25-23(a) was adopted during the Regular Session of 2014. It states:

“(a) No public official elected to a term of office shall serve for a fee as a lobbyist or otherwise represent a client, including his or her employer, before any legislative body or any branch of state or local government, including the executive and judicial branches of government, and including the Legislature of Alabama or any board, agency, commission, or department thereof, during the term or remainder of the term for which the official was elected. For purposes of this subsection, such prohibition shall not include a former member of the Alabama Judiciary who as an attorney represents a client in a legal, non-lobbying capacity.”

On February 4, 2015, the Commission issued Advisory Opinion No. 2015-01 to Matthew D. Fridy, a member of the Alabama House of Representatives, who was actively engaged in the practice of law when he was elected. His specific question was: “May a member of the Alabama Legislature, who is an attorney in private practice, practice law before courts and administrative agencies in a legal, non-lobbying capacity, during his term of office?” The language “represent a client...before any legislative body or **any branch of state or local government**” prompted his question. (Emphasis added.) His question and that opinion acknowledged Section 23(a)’s lobbying ban on public officials.

That opinion held that Rep. Fridy could simultaneously practice law and serve in the Legislature and further stated in relation to Section 23(a):

“The purpose was not to prohibit individuals from earning a living in their chosen field; it was intended to prohibit those individuals from using their position to obtain business opportunities for themselves by using their former position to exert influence.”

Applying the “representation” language of Section 23(a) strictly under the facts of Rep. Fridy’s request would have placed him in the position of having to choose between being a lawyer or a legislator, and would have prohibited any lawyer from simultaneously serving in the Legislature and practicing law. It would have placed 23(a) in clear conflict with Ala. Code § 36-25-2(b) and § 36-25-1(34)(b)(10), both of which allow legislators to continue, within limits, working in their chosen career while simultaneously serving in the Legislature. Section 2 directs the Commission to respect that balance, as well. Applying the terms of Section 23(a) to prohibit “representing your employer” outside of the context of lobbying, when there are other sections that prohibit using your office to benefit both yourself and your employer, would have frustrated the underlying principles of the Act and would have been irreconcilable within the Act itself, just as it would be for Senator Chambliss.

“[T]he first rule of statutory construction [is] that where the meaning of the plain language of the statute is clear, it must be construed according to its plain language.” Simmons v. State, ___ So. 3d ___ (Ala. Crim. App. 2016). “Only if there is no rational way to interpret the words stated will a court look beyond those words to determine legislative intent behind a

statute.” Id. “In determining whether judicial construction is required, the language of the entire statute under review must be read together and the determination of any ambiguity must be made on the basis of the entire statute.” Id.

A reading of the entire statute indicates that lobbying is the intended prohibition of Section 23. First, the Title of the Enrolled Act summarizes the purpose of Act No. 2014-440 to be “to prohibit an elected public official from lobbying any legislative body or any branch of state or local government...” All subparts of Section 23 deal with lobbying. What is clear from the language of the entire statute, therefore, is that the Legislature intended to prohibit public officials from lobbying while in office and for the remainder of the term for which they were elected should they leave office early. There are other sections of the Code, however, that prohibit public officials from using their office (i.e., trading on the office itself) to obtain business opportunities for themselves. See Ala. Code §§ 36-25-5(a) and 5.1.

Section 13(b), in addition, prohibits a public official who resigns from office prior to the expiration of his term of office from representing his employer before the legislative body of which he was a member for the remainder of his term of office plus two years, which applies to Senator Chambliss in the present matter in relation to the Prattville City Council.

Therefore, Senator Chambliss, a licensed Civil Engineer, may engage in the private practice of civil engineering while serving as a member of the Alabama Senate provided that he not violate the use of office for personal gain prohibitions of Ala. Code § 36-25-5, the solicitation prohibitions of Ala. Code § 36-25-5.1 (subject to the exception found in 36-25-1(34)(b)(10)), the prohibitions of Ala. Code § 36-25-7 (accepting anything for the purpose of corruptly influencing official action); that he complies with the filing requirements of Ala. Code § 36-25-11 related to money received from public sources, that he not violate the revolving door prohibitions of Ala. Code §§ 36-25-13(a) and 13(b), as it relates to the City of Prattville, and that he neither lobby any legislative body in violation of Ala. Code § 36-25-23(a), nor violate the prohibitions of 23(c) of soliciting anything other than a campaign contribution from a lobbyist.

In AO 2016-27, the Commission gave guidance on applying the exception found in Ala. Code § 36-25-1(34)(b)(10), and we refer Senator Chambliss to those factors which he should consider as future business opportunities may present themselves. Additionally, Senator Chambliss is advised to follow the clear prohibitions in Section 5 and not use his office for personal gain with respect to his engineering business. For example, Senator Chambliss should exercise caution in retaining new clients that he did not do business with prior to being elected to the Senate such as expanding his business into areas that are outside his field of expertise, or working for clients that may benefit from his official position or have interests pending in the Legislature. Senator Chambliss should comply with all Competitive Bid or Public Works laws if applicable, including being able to demonstrate why a contract not required to be bid was incapable of being bid if that is the case. These are merely examples of matters Senator

Chambliss should consider in his work based on the facts and circumstances known to the Commission and are neither exhaustive nor applicable to all other legislators' private work.

CONCLUSION


Ala. Code § 36-25-23(a) does not prohibit a licensed Civil Engineer who serves in the Legislature from engaging in the private practice of civil engineering while still in office; however, he may not lobby any legislative body (state, county or local) on behalf of his employer without violating Section 23(a).

The public will know he is a State Senator and that fact alone would not prevent him from practicing civil engineering. He may not, however, use the fact that he is a State Senator in order to gain new clients (in other words, he may not trade on the office) without violating Section 5(a).

He must, as well, comply with the following sections: Ala. Code § 36-25-5.1 (subject to the exception found in Ala. Code § 36-25-1(34)(b)(10)); the prohibitions of Ala. Code § 36-25-7; Ala. Code § 36-25-11; Ala. Code §§ 36-25-13(a) and 13(b) as they relate to the City of Prattville; and Ala. Code §§ 36-25-23(a) and 23(c).

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on October 5, 2016.

A handwritten signature in dark ink, appearing to read "Jerry L. Fielding", is written over the printed name and title.

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