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January 10, 1996

## ADVISORY OPINION NO. 96-12

Mr. Tony C. Wood, Jr.  
2641 Essex Place  
Montgomery, Alabama 36111

**Revolving Door/ Employment With  
Business Regulated By Employee  
Within Two Year Period.**

Subsequent to June 19, 1996, 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.

Subsequent to June 19, 1996, 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.

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Dear Mr. Wood:

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 AND ANALYSIS**

Since the passage of the amended Ethics Law, there has been great concern from public employees as to the ramifications of Section 36-25-13 and their ability to accept employment in the private sector, should they decide to leave the State's employment.

It should first be pointed out that amended Section 36-25-13 does not go into effect until June 19, 1996, as per Section 36-25-30, Section 4.

There have been several questions presented to the Ethics Commission which will be addressed individually.

#### ***QUESTION NO. 1.***

A private consulting firm represents, among its clients, facilities which are regulated by the Alabama Department of Environmental Management. Can the consulting firm offer a position of employment to an ADEM employee? If so, can the ADEM employee, who is now an employee of the consulting firm, represent the consulting firm's clients, who are regulated by ADEM, before ADEM and the Commission?

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-13(b) & (d) 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".*

*"(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".*

As has been pointed out, and will be repeated several times in this opinion, Section 36-25-13 is not effective until June 19, 1996. Based on that fact, the answer to both sections of question number one, must be answered in the affirmative, if the change in employment occurs prior to June 19, 1996.

Likewise, both sections of question number one, must be answered in the negative, if the change in employment occurs subsequent to June 19, 1996.

In other words, a private consulting firm may offer a position to an ADEM employee, and that ADEM employee may accept that employment and represent the consulting firm before ADEM if it occurs prior to June 19, 1996, but he may not, if it occurs subsequent to that date.

#### ***QUESTION NO. 2.***

A company which is regulated by ADEM, subcontracts work at its facility to a non-regulated company. The work is to be performed at the major site of the regulated company. Can the subcontractor offer employment to the ADEM employee? If so, can the ADEM employee who is now an employee of the subcontractor, represent the subcontractor clients who are regulated by ADEM, before ADEM and the Commission?

The new provisions of the law specifically prohibit a person from soliciting or accepting employment with a business that he or she personally participates in the direct regulation of. The key phrase being "personally participates in the direct regulation of". In section one of hypothetical question number two, the answer may be answered in the affirmative, so long as the subcontracting employer is a non-regulated entity.

Part two of question two must be answered in the negative, in that no public employee shall serve for a fee as a lobbyist or otherwise represent clients before the board, agency, commission, or department of which he or he is a former employee, **including his or her employer... for a period of two years after he or she leaves such employment.**

Again, however, this section becomes effective June 19, 1996, and this activity is not prohibited until that date.

#### ***QUESTION NO. 3.***

An ADEM employee desires to leave state service for another position. He or she



contacts a private employment agency, provides a resume and all other information needed by the employment agency to assist personnel there in finding a suitable position for the State employee.

Without the knowledge of the State employee, the private employment agency contacts the appropriate hiring official of a corporation regulated by ADEM and inquires about possible job opportunities for the State ADEM employee. Can the ADEM employee, who is now an employee of a regulated corporation represent the corporation before ADEM and the Commission?

Regardless of how the employment was obtained, Section 36-25-13(d) states that not only may the employment not be solicited, it may not be accepted if the individual personally participated in the direct regulation of that business.

Further Section 36-25-13(b) prohibits an employee from representing an employer before the public agency that previously employs them for a period of two years after the state employment ends.

#### ***QUESTION NO. 4.***

An ADEM employee desires to leave State service for another position. While still employed at ADEM, may an ADEM employee solicit employment by sending his or her resume to regulated corporations with which he or she has never regulated or had any dealings with while an ADEM employee? If so, can the ADEM employee, who is now an employee of a regulated corporation, represent the corporation before ADEM and the Commission?

As to the first part of question number four, the ADEM employee may solicit and accept employment with the regulated corporation; provided they did not personally participate in the direct regulation of that business; therefore, the ADEM employee is not prohibited from seeking or accepting employment from a regulated business, unless they personally participated in the direct regulation of that business while employed at ADEM.

As to the second part of question number four, Section 36-25-13(b) prohibits this representation for a period of two years after leaving ADEM's employment.

#### ***QUESTION NO. 5.***

An ADEM employee desires to leave State service for another position, if any of the answers to the above questions are no, what is the correct method that is ethically sound in your



minds to find work in the environmental field in the State of Alabama?

An ADEM employee may solicit and accept employment in the private sector from a business that they had no personal participation in the direct regulation, audit, or investigation of.

Should the ADEM employee have done the above, he may not accept or solicit employment with the regulated business for a period of two years after the ADEM employment ends.

It is, again, important to point out that the above section does not go into effect until June 19, 1996; and therefore, Section 36-25-13 from the prior Ethics Law remains in effect until that date, as the amended Ethics law contains no repealer provision.

Section 36-25-13(a) & (b) from the prior Ethics Law, states:

*"(a) No former state official or employee shall serve for a fee as a lobbyist or represent clients before the board of which he is a former member or employee for a period of three years after he leaves such membership or employment, unless notice of such representation is given within five days after such appearance to the state ethics commission in the manner prescribed by the commission."*

*"No former public official or employee shall enter into a contract with any governmental agencies unless within five days of entering into said contract notice is filed with the commission of his previous status as a public official or employee and a copy of the contract provided."*

Under previous law, the ADEM employee may not serve for a fee as a lobbyist or represent clients before the body or contract with that body of which he is a former member or employee for three years, unless within five days of making such an appearance he notifies the Ethics Commission of that employment.

The manner of notification prescribed by the Commission merely requires the former employee to notify the Commission in writing, setting forth the specifics of the representation, or contract with ADEM.

### **CONCLUSION**

Subsequent to June 19, 1996, no public official or public employee who personally

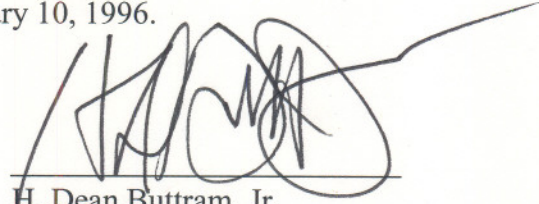
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participates in the direct regulation, audit, or investigation of a private business, corporation, partnership, or individual shall within two years of his or her departure from such employment, solicit or accept employment with such private business, corporation, partnership, or individual.

Further, subsequent to June 19, 1996, 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.

**AUTHORITY**

By 5 - 0 vote of the Alabama Ethics Commission on January 10, 1996.



H. Dean Buttram, Jr.  
Chair  
Alabama Ethics Commission