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ADVISORY OPINION NO. 96-74

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Coverage Under Alabama Ethics
Law/ Members Of Local And County
Boards Of Education Subject To The
Alabama Ethics Law.

Members of local and county boards
of education, and employees thereof,
as defined by Section 36-25-1(24)
and (25), are subject to the
provisions of the Alabama Ethics
Law.

Enforcement of Ethics Law/ Ethics
Commission Enforcer Of 36-25-1, et.
seq.

The enforcement of the Alabama
Ethics Law is vested in the Alabama
Ethics Commission per the authority
of Section 36-25-27(c), Code of
Alabama, 1975.

Statute Of Limitations/ Violations Of
Ethics Law By Public Official
And/Or Public Employee.

Subsequent to October 1, 1995, the

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Statute of Limitations for a felony prosecution brought pursuant to the Alabama Ethics Law shall be four years from the commission of the offense.

Subsequent to October 1, 1995, the Statute of Limitations for a misdemeanor prosecution brought pursuant to the Alabama Ethics Law shall be two years from the commission of the offense.

Prior to October 1, 1995, the Statute of Limitations for a felony prosecution brought pursuant to the Alabama Ethics Law shall be three years from the commission of the offense.

Prior to October 1, 1995, the Statute of Limitations for a misdemeanor prosecution brought pursuant to the Alabama Ethics Law shall be one year from the commission of the offense.

Use Of Office For Personal Gain/
Members Of Local And County
Boards Of Education Hiring Family
Members.

Members of local and county boards of education may not use their position to influence the hiring of family members.

Dear Mr. Jones:

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.

QUESTIONS PRESENTED

1. Are members and employees of local/county boards of education subject to the laws and rules addressed by the *Code of Ethics* for public officials, employees, etc., as codified in *Title 36, Chapter 25* of the Code of Alabama?
2. If the Alabama Ethics Law is applicable to local and county boards of education, is the Alabama Ethics Commission the proper agency to investigate and prosecute such violations?
3. Does the annual rehiring of employees by the local/county board of education constitute a new starting time by which to calculate a violation of Section 36-25-1(1-30), Code of Alabama, if the employee being rehired is a family member of the local/county board of education member?
4. May members of local and county boards of education hire family members?

FACTS AND ANALYSIS

Several hypothetical questions have been presented to the Alabama Ethics Commission concerning employment procedures for local and county boards of education within the State of Alabama. The questions posed will be analyzed individually.

Question No. 1.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24) states:

"(24) 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(25) states:

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"(25) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2."

As the law specifies, members of local and county boards of education, as elected or appointed officials, are subject to the provisions of the Alabama Ethics Law.

As further evidence of the legislature's intent that such individuals be covered by the Ethics Law, Section 36-25-14(a)(17) requires that City and County School Superintendents and School Board Members be required to file Statements of Economic Interests with the Ethics Commission. Likewise, Section 36-25-14(18) requires City and County School Principals and Administrators to likewise file Statements of Economic Interests.

Question No. 2.

Section 36-25-27(c) states:

"The enforcement of this chapter shall be vested in the commission; provided however, nothing in this chapter shall be deemed to limit or otherwise prohibit the Attorney General or the district attorney for the appropriate jurisdiction from enforcing any provision of this chapter as they deem appropriate."

As the law specifically says, the Alabama Ethics Commission is charged with the enforcement of the Alabama Ethics Law; however, the law also allows the Attorney General and/or district attorney for the appropriate jurisdiction from enforcing provisions of the Ethics Law as deemed appropriate by that law enforcement agency.

Section 36-25-4(c) states:

". . . Prior to commencing any investigation, the commission shall: (1) receive a written and signed complaint which sets forth in detail the specific charges against a respondent, and the factual allegations which support such charges and (2) the director shall conduct a preliminary inquiry in order to make an initial determination that reasonable cause exists to conduct an investigation . . ."

Section 36-25-4(g) states:

"If the commission finds cause that a person covered by this chapter has violated it, the case and the commission's findings shall be forwarded to the district attorney for the jurisdiction in which the alleged acts occurred or to the district attorney for the jurisdiction in which the alleged acts occurred or to the Attorney General. . ."

As the law clearly states, should a complaint be filed with the Ethics Commission, an investigation shall be conducted, a case presented to the Ethics Commission, and the Commission making a determination as to whether or not probable cause exists to believe a violation of the Ethics Law has occurred. And, if such probable cause exists, referring the case to the district attorney for the appropriate jurisdiction or the Attorney General's Office for further legal proceedings.

Question No. 3.

A question has been raised as to when a statute of limitations for a violation of the Ethics Law would begin to run.

In the hypothetical situation presented to the Ethics Commission, the question posed relates to employees of a local or county school board being re-employed on an annual basis by the local or county school board.

Based on a hypothetical set of facts, should the annual re-employment be that of a family member of a local or county school board member, as defined in Sections 36-25-1(11) & (12), and should such school board member be using their position for the personal benefit of their family member; and therefore, a violation of the Alabama Ethics Law having occurred, the statute of limitations would begin to run from the date of the most recent rehiring of the family member. In other words, the most recent violation. If the rehiring of a family member, which constitutes a violation of the Alabama Ethics Law, occurred after October 1, 1995, the appropriate statute of limitations would be four years. Likewise, should the rehiring of the family member, which constitutes a violation of the Ethics Law, have occurred prior to October 1, 1995, the statute of limitations would be three years from the date of rehire.

Question No. 4.

Section 36-25-1(11) states:

"(11) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the public employee."

Section 35-25-1(12) states:

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"(12) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official."

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 36-25-9(c) states:

"(c) No member of any county or municipal agency, board, or commission shall vote or participate in any matter in which the member or family member of the member has any financial gain or interest."

A cornerstone of the Alabama Ethics Law is that a public employee or public official may not use his public position to obtain a personal benefit to himself, a family member, or a business with which either they or a family member is associated. Likewise, they may not vote or otherwise participate in any matters in which they or a family member has a financial interest.

In OPINION OF THE JUSTICES NO. 317, 474 So.2d. 700, the Supreme Court of Alabama stated that Legislators, who were also educators, could vote and participate in matters involving teacher pay raises and school funding; provided, that the family member of the Legislator who was an educator, or the Legislator himself who was an educator, was not benefited in a way different than other members of the class in which he or she belongs.

In other words, relative to the hypothetical situation before the Ethics Commission, a school board member may vote and participate in matters involving across the board pay raises where their family member is not affected in a manner different than other members of the class to which they belong. However, should the family member of the school board member be for example, a science teacher, the school board member could not vote on pay raises for science teachers, as this would affect the family member in a way different than other members of the class to which the family member belonged.

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CONCLUSION

Members of local and county boards of education, and employees thereof, as defined by Section 36-25-1(24) and (25), are subject to the provisions of the Alabama Ethics Law.

The enforcement of the Alabama Ethics Law is vested in the Alabama Ethics Commission per the authority of Section 36-25-27(c), Code of Alabama, 1975.

Subsequent to October 1, 1995, the Statute of Limitations for a felony prosecution brought pursuant to the Alabama Ethics Law shall be four years from the commission of the offense.

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Members of local and county boards of education may not use their position to influence the hiring of family members.

AUTHORITY

By 5 - 0 vote of the Alabama Ethics Commission on August 7, 1996.



H. Dean Buttram, Jr.
Chair
Alabama Ethics Commission