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**ADVISORY OPINION NO. 98-52**

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Applicability of Section 36-25-13(b) Of The  
"Revolving Door" Provision Of The  
Alabama Ethics Law To Employees Of  
Hospitals, Mental Retardation Facilities And  
Nursing Homes Operated By The  
Department Of Mental Health/Mental  
Retardation.

Employees of hospitals, mental retardation  
facilities and nursing homes operated by the  
Department of Mental Health/Mental  
Retardation including, but not limited to,  
contract employees, are not subject to the  
Alabama Ethics Law, based on the  
exclusions contained in Sections 36-25-1(13)  
and 36-25-1(23) of the Alabama Ethics Law.

Employees and Board members of Health  
Care Authorities established under the  
Health Care Authorities Act of 1982 are  
exempt from the Alabama Ethics Law by  
Section 22-21-334.

Employees of University Hospitals such as the University of South Alabama and University of Alabama at Birmingham are exempt from the provisions of the Alabama Ethics Law; provided, all their job responsibilities deal directly with the hospital and not the university.

Professors, whose job responsibilities include both classroom time as well as hospital teaching time, are not exempt from the provisions of the Alabama Ethics Law.

This exemption is strictly limited to those full-time employees of the Mental Health/Mental Retardation facilities, hospitals and health care authorities and does not exempt those other employees of the Department of Mental Health/Mental Retardation.

Dear Ms. Lynn:

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**

Are employees of hospitals, mental retardation facilities and nursing homes operated by the Department of Mental Health and Mental Retardation exempt from the prohibition set forth in Section 36-25-13(b), the "Revolving Door" provision of the Alabama Ethics Law?

#### **FACTS AND ANALYSIS**

The Alabama Department of Mental Health is a public corporation created by statute under Alabama Code Section 22-50-4. The Department's powers are established by Code Sections 22-50-9 and 22-50-11. The Department owns and operates six mental illness hospitals, four intermediate care facilities for mental retardation and three nursing homes. The hospitals, Bryce, Greil, Searcy, North Alabama Regional, Thomasville and Taylor Hardin Secure Medical

are psychiatric hospitals designed to treat the mentally ill and their legal status is not different from the hospital operated by UAB. Their hospitals are accredited by the Joint Commission on Accreditation of Healthcare Organizations. The mental retardation facilities provide around the clock healthcare for the mentally retarded including medical treatment, rehabilitation and training. These mental retardation facilities and the nursing homes are certified by Medicaid.

The Department has always acted under the assumption that the employees of these facilities are exempt under this statute. It is not uncommon for an employee such as a doctor to leave the employment of the Department of Mental Health, to go into private practice and then contract on a part-time basis with the Department.

The Alabama Ethics Law, Code of Alabama, 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 36-25-13(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 36-25-1(13) defines governmental corporations and authorities as:

“(13) GOVERNMENTAL CORPORATIONS AND AUTHORITIES. Public or private corporations and authorities, including but not limited to, hospitals or other health care corporations, established pursuant to state law by state, county or municipal governments for the purpose of carrying out a specific governmental function. Notwithstanding the foregoing, all employees, including contract

employees, of hospitals or other health care corporations and authorities are exempt from the provisions of this chapter.”

Health Care Authorities, per se, were established under Act 92-418, which is called the Health Care Authorities Act of 1982 and is codified at Title 22, Chapter 21, Code of Alabama, 1975.

For purposes of the Health Care Authorities Act, a health care facility is defined as:

“Generally, any one or more buildings or facilities which serve to promote the public health, either by providing places or facilities for the diagnoses, treatment, care, cure or convalescence of sick, injured, physically disabled or handicapped, mentally ill, retarded or disturbed persons, or for the prevention of sickness and disease, or for the care, treatment and rehabilitation of alcoholics, or for the care of elderly persons, or for research with respect to any of the foregoing including without limiting the generality of the foregoing:

- a. Public hospitals of all types, public clinics, sanatoria, public health centers and related public health facilities such as medical or dental facilities, laboratories, out-patient departments, educational facilities, nurses’ homes and nurses’ training facilities, dormitories or residences for hospital personnel or students, other employee related facilities, central service facilities operated in connection with public hospitals and other facilities . . .”

Section 22-21-334 of the Health Care Authorities Act states that:

“The provisions of Chapter 25 of Title 36 shall, any provision thereof to the contrary notwithstanding, not apply to any authorities, the members of its board or any of its officers or employees.”

Based on the Health Care Authorities Act, it is clear that any facility which is established under the guidelines of the Health Care Authorities Act is specifically exempted from the jurisdiction of the Alabama Ethics Commission and the Alabama Ethics Law. It would further appear that Section 36-25-1(23) would extend this exclusion to include employees of other hospitals and public health facilities.

Section 22-21-20 defines a hospital as:

“General and specialized hospitals including ancillary services; independent clinical laboratories; rehabilitation centers; ambulatory surgical treatment

facilities for patients not requiring hospitalization; end stage renal disease treatment and transplant centers, including free-standing hemodialysis units; abortion or reproductive health centers; hospices; health maintenance organizations; and other related health care institutions when such institution is primarily engaged in offering to the public generally; facilities and services for the diagnosis and/or treatment of injury, deformity, disease, surgical or obstetrical care. Also included within the term are long term care facilities such as, but not limited to, skilled nursing facilities, intermediate care facilities, homes for the aged, domiciliary care facilities and related health care institutions when such institution is primarily engaged in offering room, board, laundry and personal assistance with activities of daily living and incidentals thereto. The term 'hospitals' relates to health care institutions and shall not include the private offices of physicians or dentists, whether in individual, group, professional corporation or professional association practice. This section shall not apply to county or district health departments."

It would appear that while employees of the Department of Mental Health/Mental Retardation are covered by the provisions of the Alabama Ethics Law (including the "Revolving Door Provisions"), those employees including contract employees, who work specifically at a mental health facility such as Searcy Hospital would be excluded from the provisions of the Ethics Law based on the above Code Sections. In other words, those Mental Health/Mental Retardation employees located in the office in Montgomery or other county or local offices would be covered by the Ethics Law, while those employees of the facilities per se, would be excluded.

Another example, would be the University of South Alabama Hospital, UAB Hospital, etc. While employees of these universities are covered by the Ethics Law (including those professors whose job responsibilities include some hospital work), it would appear that those employees of the hospital such as doctors, nurses, technicians, etc., would be excluded if their entire employment relationship is with the University Hospital.

Based on the above law and the facts as provided, employees of the Department of Mental Health/Mental Retardation are subject to the provisions of the Alabama Ethics Law.

Employees of hospitals, mental retardation facilities and nursing homes operated by the Department of Mental Health/Mental Retardation including, but not limited to, contract employees, are not subject to the Alabama Ethics Law, based on the exclusions contained in Sections 36-25-1(13) and 36-25-1(23) of the Alabama Ethics Law.

Employees and Board members of Health Care Authorities established under the Health Care Authorities Act of 1982 are exempt from the Alabama Ethics Law by Section 22-21-334.

Employees of University Hospitals such as the University of South Alabama and University of Alabama at Birmingham are exempt from the provisions of the Alabama Ethics Law; provided, all their job responsibilities deal directly with the hospital and not the university.

Professors, whose job responsibilities include both classroom time as well as hospital teaching time, are not exempt from the provisions of the Alabama Ethics Law.

This exemption is strictly limited to those full-time employees of the Mental Health/Mental Retardation facilities, hospitals and health care authorities and does not exempt those other employees of the Department of Mental Health/Mental Retardation.

#### **CONCLUSION**

Employees of hospitals, mental retardation facilities and nursing homes operated by the Department of Mental Health/Mental Retardation including, but not limited to, contract employees, are not subject to the Alabama Ethics Law based on the exclusions contained in Sections 36-25-1(13) and 36-25-1(23) of the Alabama Ethics Law.

Employees and Board members of Health Care Authorities established under the Health Care Authorities Act of 1982 are exempt from the Alabama Ethics Law by Section 22-21-334.

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**AUTHORITY**

By 5-0 vote of the Alabama Ethics Commission on October 14, 1998.



Camille S. Butrus

Chair

Alabama Ethics Commission