

Alabama Ethics Commission
Summary of Advisory Opinions Issued June 3, 2020

Advisory Opinion No. 2020-01

In Advisory Opinion No. 2020-01 (Eubanks), the Alabama Ethics Commission (“Commission”) advised that an individual who is both a public official and a public employee may, in her capacity as a public official, vote on, attempt to influence, or otherwise participate in legislation affecting her public employer provided that the legislation does not present a conflict of interest.

Michelle Eubanks, a public employee by virtue of her employment at the University of North Alabama (“UNA”) and a public official by virtue of her position on the City Council for the City of Florence (“City”), submitted the request for an advisory opinion asking whether she may vote on, attempt to influence, or otherwise participate in legislation affecting UNA. Her question arose due to two previous advisory opinions: AO2011-03(B) (Morris), which advised that a member of the Florence City Council who was also employed by UNA had a “general conflict of interest” relating to the sale of property from the City to UNA, and AO2016-33 (Strange), which advised that a member of the Montgomery City Council who was also a public employee may vote on issues affecting that member’s public employer provided that neither the city councilor nor his or her family received personal gain therefrom.

“Conflict of interest” is defined in two separate places in the Alabama Ethics Act,¹ and neither definition encompasses the “general conflict of interest” language used by the Commission in AO2011-03(B). Rather, both definitions condition the existence of a conflict of interest on whether the matter before the public official “uniquely affects” the public official, the public official’s family members, or a business with which the public official is associated.

Relying on that “uniquely affects” language, the Commission stated that “voting on a matter that affects the public official, a member of their family, or any of their businesses **personally and uniquely** is a conflict.” (AO2020-01 at p. 4 (emphasis added)). The Commission concluded that “[a]bsent being uniquely affected, a member of the city council may vote on

¹ Ala. Code § 36-25-1(8): “A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.”

Ala. Code §36-25-5(f): “A conflict of interest shall exist when a member of a legislative body, public official, or public employee has a substantial financial interest by reason of ownership of, control of, or the exercise of power over any interest greater than five percent of the value of any corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation; or who is an officer or director for any such corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation.”

matters that affect the public official's public employer and **whose ultimate beneficiary is . . . the public.**" *Id.* (emphasis added).²

A copy of Advisory Opinion No. 2020-01 can be accessed on the Commission's website at <http://ethics.alabama.gov/docs/pdf/AO%202020-01%20Eubanks,%20Michelle.pdf>

Advisory Opinion No. 2020-02

In Advisory Opinion No. 2020-02 (Robichaux), the Commission confirmed its previous guidance from AO 2019-11 (Fehl) that the Ethics Act's "Revolving Door" provision does not prohibit governmental agencies or bodies from contracting with former public officials or employees to provide personal or professional services on behalf of the agency or body.

The Fayette County Board of Education ("Board") submitted the request for an advisory opinion, asking the Commission whether it may consider Walden Tucker, who is currently a member of the Board (and thus, a public official), for the position of head football coach of Fayette County High School, when that hiring decision would be made by the Board itself.

Ala. Code § 36-25-13(d), a subsection of the "Revolving Door" provision of the Ethics Act, prohibits, for a two-year waiting period, certain public officials or public employees of a governmental agency or body from leaving their position or employment and then re-engaging with their former agency or body in certain circumstances. In AO2019-11, however, the Commission relied on guidance from the Code of Ethics Clarification and Reform Commission in advising that the two-year Revolving Door waiting period under Ala. Code § 36-25-13(d) does **not** apply to governmental agencies or bodies who rehire or contract with former public officials or public employees to provide personal or professional services on behalf of the agency or body.

Confirming its guidance in AO2019-11, the Commission advised that the "Revolving Door" provision of the Ethics Act would not prohibit the Board from considering Mr. Tucker as a candidate for the football coaching job and would not prohibit Mr. Tucker from accepting that position, provided that he resigns from the Board before seeking the position.

In addition to the "Revolving Door" analysis, the Commission also noted that Mr. Tucker, like any other public official, may not use his public position for personal gain in violation of Ala. Code § 36-25-5(a).³ In practice, this means he must resign from the Board before seeking the football coaching job, and he may not use his position on the Board to influence other Board members in their ultimate hiring decision.

² Public officials who are members of a county or municipal agency, board, or commission must also note that Ala. Code § 36-25-9(c) prohibits them from voting or participating in any matter in which the public official or their family member has any financial gain or interest.

³ Ala. Code § 36-25-5(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. . . ."

Finally, the Commission also stated that Mr. Tucker may not seek to corruptly influence the official action of any Board member in violation of Ala. Code § 36-25-7(a)⁴ if he were to apply for the football coaching job, and he may not use any confidential information gained during his membership on the Board in his pursuit of the football coaching job in violation of Ala. Code § 36-25-8.⁵

A copy of Advisory Opinion No. 2020-02 can be accessed on the Commission's website at <http://ethics.alabama.gov/docs/pdf/AO%202020-02%20Robichaux,%20Ryan.pdf>.

⁴ Ala. Code § 36-25-7(a): "No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive anything for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited is a thing of value."

⁵ Ala. Code § 36-25-8: "No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business."