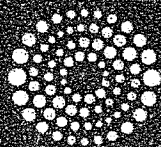
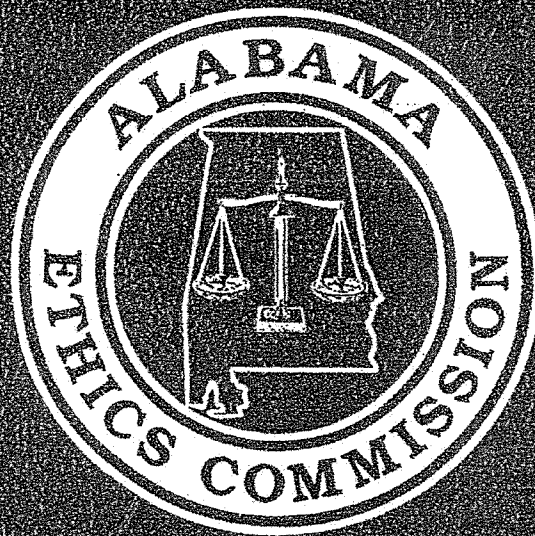


ALABAMA ETHICS LAW

2014 Edition



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CODE OF ALABAMA

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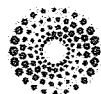
Alabama Ethics Law

Chapter 25 of Title 36 (Public Officers and Employees)

(Sections 36-25-1 through 36-25-30)

Current through the 2014 Regular Session

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CODE OF ALABAMA

TITLE 36.

PUBLIC OFFICERS AND EMPLOYEES.

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HISTORY

Code Commissioner's Notes

Acts 1995, No. 95-194, § 5 provides: "Nothing in this act shall be applied retroactively after the passage and approval by the Governor of this act, or upon its otherwise becoming law, as to any action or inaction which occurred before the effective date of this act [October 1, 1995]."

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Ala. Admin. Code 560-X-37-.01, Medicaid Agency; Managed Care: Establishment.

LIBRARY REFERENCES

Law Review Articles:

Money in politics: Reforming Alabama's campaign finance and ethics laws. 45 Ala.L.Rev. 675 (1994).

Towards a Madisonian, interest-group-based, approach to lobbying regulation. 58 Ala.L.Rev. 513 (2007).

Ethics reform in Alabama. 61 Ala.L.Rev. 807 (2010).

CASENOTES

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1. Constitutionality

Governor's constitutional rights to freedom of religion and to equal protection were not violated by application to him of the ethics law. *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala. 1992), affirmed 976 F.2d 744.

Ethics Act was not unconstitutionally vague, as applied to prosecution of defendant, state insurance commissioner, who resigned as president of insurance company after he was appointed commissioner, for associating with business he regulated, and knowingly and willfully accepting money from person associated with business he regulated, even though Ethics Act did not specify timeframe within which he needed to sever ties with business. *Dill v. State*, 723 So.2d 787 (Ala.Crim.App.1998), rehearing denied. *Officers And Public Employees* ⇨ 121

This chapter is not unconstitutional as legislative abrogation of separation of powers by seeking to remove an executive officer when such can only be accomplished by impeachment. *Allen v. State*, 380 So.2d 313 (Ala.Crim.App.1979), writ denied 380 So.2d 341, certiorari denied 101 S.Ct. 121, 449 U.S. 842, 66 L.Ed.2d 49.

2. Purpose

The Legislature passed this chapter to prevent public officials from using their offices to reap private gains. The "conflicts of interests" referred to in this chapter are conflicts between an official's private interests and his official duties. *Rampey v. State*, 415 So.2d 1184 (Ala.Crim.App.1982).

§ 36-25-1. Definitions.

Whenever used in this chapter, the following words and terms shall have the following meanings:

- (1) **BUSINESS.** Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity.
- (2) **BUSINESS WITH WHICH THE PERSON IS ASSOCIATED.** Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business.
- (3) **CANDIDATE.** This term as used in this chapter shall have the same meaning ascribed to it in Section 17-22A-2.
- (4) **COMMISSION.** The State Ethics Commission.
- (5) **COMPLAINT.** Written allegation or allegations that a violation of this chapter has occurred.
- (6) **COMPLAINANT.** A person who alleges a violation or violations of this chapter by filing a complaint against a respondent.
- (7) **CONFIDENTIAL INFORMATION.** A complaint filed pursuant to this chapter, together with any statement, conversations, knowledge of evidence, or information received from the complainant, witness, or other person related to such complaint.

3. Impeachment

Prosecution under this chapter would not amount to impeachment. *Ex parte Allen*, 380 So.2d 341 (Ala.1980).

Penalty prescribed by this chapter in no way limits power of the Legislature to impeach public officials. *Allen v. State*, 380 So.2d 313 (Ala.Crim.App.1979), writ denied 380 So.2d 341, certiorari denied 101 S.Ct. 121, 449 U.S. 842, 66 L.Ed.2d 49.

4. Practice and procedure

The federal court would not address the merits of the Governor's contention that application of the state ethics law to him violates the doctrine of separation of powers, as that is a matter of state law. *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala.1992), affirmed 976 F.2d 744.

Section 36-25-27(b) directs that prosecution for violations of this chapter is to be initiated and prosecuted by the district attorney. Although the "ethics commission" established under this chapter has the authority to investigate and to report suspected violations to the appropriate law enforcement authorities, nowhere is it mandated that the commission has any authority to prosecute. *Rampey v. State*, 415 So.2d 1184 (Ala.Crim.App.1982).

(8) CONFLICT OF INTEREST. 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. A conflict of interest shall not include any of the following:

a. A loan or financial transaction made or conducted in the ordinary course of business.

b. An occasional nonpecuniary award publicly presented by an organization for performance of public service.

c. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for the personal attendance of a public official or public employee at a convention or other meeting at which he or she is scheduled to meaningfully participate in connection with his or her official duties and for which attendance no reimbursement is made by the state.

d. Any campaign contribution, including the purchase of tickets to, or advertisements in journals, for political or testimonial dinners, if the contribution is actually used for political purposes and is not given under circumstances from which it could reasonably be inferred that the purpose of the contribution is to substantially influence a public official in the performance of his or her official duties.

(9) DAY. Calendar day.

(10) DEPENDENT. Any person, regardless of his or her legal residence or domicile, who receives 50 percent or more of his or her support from the public official or public employee or his or her spouse or who resided with the public official or public employee for more than 180 days during the reporting period.

(11) DE MINIMIS. A value twenty-five dollars (\$25) or less per occasion and an aggregate of fifty dollars (\$50) or less in a calendar year from any single provider, or such other amounts as may be prescribed by the Ethics Commission from time to time by rule pursuant to the Administrative Procedure Act or adjusted each four years from August 1, 2012, to reflect any increase in the cost of living as indicated by the United States Department of Labor Consumer Price Index or any succeeding equivalent index.

(12) ECONOMIC DEVELOPMENT FUNCTION. Any function reasonably and directly related to the advancement of a specific, good-faith economic development or trade promotion project or objective.

(13) EDUCATIONAL FUNCTION. A meeting, event, or activity held within the State of Alabama, or if the function is predominantly attended by partici-

pants from other states, held within the continental United States, which is organized around a formal program or agenda of educational or informational speeches, debates, panel discussions, or other presentations concerning matters within the scope of the participants' official duties or other matters of public policy, including social services and community development policies, economic development or trade, ethics, government services or programs, or government operations, and which, taking into account the totality of the program or agenda, could not reasonably be perceived as a subterfuge for a purely social, recreational, or entertainment function.

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

(15) **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.

(16) **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.

(17) **HOUSEHOLD.** The public official, public employee, and his or her spouse and dependents.

(18) **LAW ENFORCEMENT OFFICER.** A full-time employee of a governmental unit responsible for the prevention or investigation of crime who is authorized by law to carry firearms, execute search warrants, and make arrests.

(19) **LEGISLATIVE BODY.** The term "legislative body" includes the following:

a. The Legislature of Alabama, which includes both the Senate of Alabama and the House of Representatives of Alabama, unless specified otherwise by the express language of any provision herein, and any committee or subcommittee thereof.

b. A county commission, and any committee or subcommittee thereof.

c. A city council, city commission, town council, or other municipal council or commission, and any committee or subcommittee thereof.

(20) **LOBBY or LOBBYING.** The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body. The term does not include providing public testimony before a legislative body or regulatory body or any committee thereof.

(21) LOBBYIST.

a. The term lobbyist includes any of the following:

1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.

2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.

3. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.

4. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.

b. The term lobbyist does not include any of the following:

1. An elected official on a matter which involves that person's official duties.

2. A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.

3. Reporters and editors while pursuing normal reportorial and editorial duties.

4. Any citizen not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a particular issue or on particular legislation, or for the purpose of influencing legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.

5. A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.

6. A person whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess.

7. A person who is a member of a business, professional, or membership organization by virtue of the person's contribution to or payment of dues to the organization even though the organization engages in lobbying activities.

8. A state governmental agency head or his or her designee who provides or communicates, or both, information relating to policy or positions, or both, affecting the governmental agencies which he or she represents.

(22) MINOR VIOLATION. Any violation of this chapter in which the public official or public employee receives an economic gain in an amount less than two hundred fifty dollars (\$250) or the governmental entity has an economic loss of less than two hundred fifty dollars (\$250).

(23) PERSON. A business, individual, corporation, partnership, union, association, firm, committee, club, or other organization or group of persons.

(24) PRINCIPAL. A person or business which employs, hires, or otherwise retains a lobbyist. A principal is not a lobbyist but is not allowed to give a thing of value.

(25) PROBABLE CAUSE. A finding that the allegations are more likely than not to have occurred.

(26) 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.

(27) 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 17-13-40.

(28) REGULATORY BODY. A state agency which issues regulations in accordance with the Alabama Administrative Procedure Act or a state, county, or municipal department, agency, board, or commission which controls, according to rule or regulation, the activities, business licensure, or functions of any group, person, or persons.

(29) REPORTING PERIOD. The reporting official's or employee's fiscal tax year as it applies to his or her United States personal income tax return.

(30) REPORTING YEAR. The reporting official's or employee's fiscal tax year as it applies to his or her United States personal income tax return.

(31) **RESPONDENT.** A person alleged to have violated a provision of this chapter and against whom a complaint has been filed with the commission.

(32) **STATEMENT OF ECONOMIC INTERESTS.** A financial disclosure form made available by the commission which shall be completed and filed with the commission prior to April 30 of each year covering the preceding calendar year by certain public officials and public employees.

(33) **SUPERVISOR.** Any person having authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, or discipline other public employees, or any person responsible to direct them, or to adjust their grievances, or to recommend personnel action, if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(34) **THING OF VALUE.**

a. Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event, unsecured loan, other than those loans and forbearances made in the ordinary course of business, reward, promise of future employment, or honoraria or other item of monetary value.

b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

1. A contribution reported under Chapter 5 of Title 17 or a contribution to an inaugural or transition committee.

2. Anything given by a family member of the recipient under circumstances which make it clear that it is motivated by a family relationship.

3. Anything given by a friend of the recipient under circumstances which make it clear that it is motivated by a friendship and not given because of the recipient's official position. Relevant factors include whether the friendship preexisted the recipient's status as a public employee, public official, or candidate and whether gifts have been previously exchanged between them.

4. Greeting cards, and other items, services with little intrinsic value which are intended solely for presentation, such as plaques, certificates, and trophies, promotional items commonly distributed to the general public, and items or services of de minimis value.

5. Loans from banks and other financial institutions on terms generally available to the public.

6. Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all government employees.

7. Rewards and prizes given to competitors in contests or events, including random drawings, which are open to the public.

8. Anything that is paid for by a governmental entity or an entity created by a governmental entity to support the governmental entity or secured by a governmental entity under contract, except for tickets to a sporting event offered by an educational institution to anyone other than faculty, staff, or administration of the institution.

9. Anything for which the recipient pays full value.

10. Compensation and other benefits earned from a non-government employer, vendor, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee.

11. Any assistance provided or rendered in connection with a safety or a health emergency.

12. Payment of or reimbursement for actual and necessary transportation and lodging expenses, as well as waiver of registration fees and similar costs, to facilitate the attendance of a public official or public employee, and the spouse of the public official or public employee, at an educational function or widely attended event of which the person is a primary sponsor. This exclusion applies only if the public official or public employee meaningfully participates in the event as a speaker or a panel participant, by presenting information related to his or her agency or matters pending before his or her agency, or by performing a ceremonial function appropriate to his or her official position; or if the public official's or public employee's attendance at the event is appropriate to the performance of his or her official duties or representative function.

13. Payment of or reimbursement for actual and necessary transportation and lodging expenses to facilitate a public official's or public employee's participation in an economic development function.

14. Hospitality, meals, and other food and beverages provided to a public official or public employee, and the spouse of the public official or public employee, as an integral part of an educational function, economic development function, work session, or widely attended event, such as a luncheon, banquet, or reception hosted by a civic club, chamber of commerce, charitable or educational organization, or trade or professional association.

15. Any function or activity pre-certified by the Director of the Ethics Commission as a function that meets any of the above criteria.

16. Meals and other food and beverages provided to a public official or public employee in a setting other than any of the above functions not to exceed for a lobbyist twenty-five dollars (\$25) per meal with a limit of one hundred fifty dollars (\$150) per year; and not to exceed for a principal fifty dollars (\$50) per meal with a limit of two hundred fifty dollars (\$250) per year. Notwithstanding the foregoing, the lobbyist's

limits herein shall not count against the principal's limits and likewise, the principal's limits shall not count against the lobbyist's limits.

17. Anything either (i) provided by an association or organization to which the state or, in the case of a local government official or employee, the local government pays annual dues as a membership requirement or (ii) provided by an association or organization to a public official who is a member of the association or organization and, as a result of his or her service to the association or organization, is deemed to be a public official. Further included in this exception is payment of reasonable compensation by a professional or local government association or corporation to a public official who is also an elected officer or director of the professional or local government association or corporation for services actually provided to the association or corporation in his or her capacity as an officer or director.

18. Any benefit received as a discount on accommodations, when the discount is given to the public official because the public official is a member of an organization or association whose entire membership receives the discount.

c. Nothing in this chapter shall be deemed to limit, prohibit, or otherwise require the disclosure of gifts through inheritance received by a public employee or public official.

(35) VALUE. The fair market price of a like item if purchased by a private citizen. In the case of tickets to social and sporting events and associated passes, the value is the face value printed on the ticket.

(36) WIDELY ATTENDED EVENT. A gathering, dinner, reception, or other event of mutual interest to a number of parties at which it is reasonably expected that more than 12 individuals will attend and that individuals with a diversity of views or interest will be present. (Acts 1973, No. 1056, p. 1699, § 2; Acts 1975, No. 130, p. 603, § 1; Acts 1979, No. 79-698, p. 1241, § 1; Acts 1982, No. 82-429, p. 677, § 1; Acts 1986, No. 86-321, p. 475, § 1; Acts 1995, No. 95-194, p. 269, § 1; Acts 1997, No. 97-651, p. 1217, § 1; Act 2010-764, 1st Sp. Sess., p. 29, § 1; Act 2012-433, p. 1202, § 1; Act 2012-509, p. 1507, § 1; Act 2014-440, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, rewrote this section.

The 1997 amendment, effective October 1, 1997, rewrote subdivision (3), deleted subdivision (21), redesignated subdivisions (22)-(33) as subdivisions (21)-(32), respectively, and in subdivision (31), as so redesignated, in paragraph b redesignated subparagraph 5 as subparagraph 6, in subparagraph 1 deleted "as defined in Section 17-22A-2" and added present subparagraph 5.

The 2010 amendment, effective March 20, 2011, redesignated subdivisions (11)-(32) as subdivisions (13)-(34), respectively, added subdivisions (11), (12) and (35), in subdivision (19) substituted "LOBBY OR LOBBYING" for "LOBBYING" substituted "body. The term does not include" for "body; provided, however, that" and deleted "shall not be deemed lobbying" following "thereof", in subdivision (20), in paragraph a. deleted subparagraph 3 and redesignated subparagraphs 4 and 5 as subparagraphs 3 and 4, respectively, in paragraph b., in subparagraph 1 substituted "An elected official" for "A member of a legislative body" and added subparagraphs 7 and 8, in subdivision (23) re-

wrote the final sentence, in subdivision (33), in paragraph a. substituted "event," for "offered only to public officials,"; inserted "and forbearances" and inserted "or other item of monetary value", in paragraph b. rewrote subparagraphs 1-6 and added subparagraphs 7-18, deleted paragraph c. and redesignated paragraph d. as paragraph c., and in subdivision (34) added the final sentence.

The 2012 amendments. — The 2012 amendment by Act 2012-433, effective August 1, 2012, redesignated subdivisions (11)-(35) as subdivisions (12)-(36), respectively, added subdivision (11), and in subdivision (34), in paragraph b., in subparagraph 4 inserted "and other".

The 2012 amendment by Act 2012-509, effective August 1, 2012, made no substantive changes to the section.

The 2014 amendment, effective April 10, 2014, rewrote subdivision (19). As to application, see the Code Commissioner's Notes.

Code Commissioner's Notes

In 2011, the Code Commissioner in subparagraph 4 of paragraph b. of subdivision (20) after "Any citizen" deleted "not expending funds as set out above in paragraph a.3. or" as surplusage because the text of the referenced paragraph was deleted prior to the enactment of the act amending this section.

In 2011, the Code Commissioner revised subparagraph 8 of paragraph b. of subdivision (20) for grammatical purposes. The subparagraph as enacted read: "A state governmental agency head or his or her designee who provides and/or communicates information relating to policy and/or positions affecting said governmental agencies which they represent."

In 2011, the Code Commissioner in subdivision (26) inserted "17-13-40" for "17-16-42" to reference the apparently intended code section.

In 2011, the Code Commissioner in the second sentence of subparagraph 16 of paragraph b. of subdivision (33) after "Notwithstanding" inserted "the foregoing" for clarity and grammatical purposes.

Act 2012-509, which amended Section 36-25-14, as introduced also amended Section 36-25-1. While the text of the code section remained in the enacted bill, the amendatory changes were deleted during the legislative process, resulting in no change to Section 36-25-1 being made by Act 2012-509.

Act 2014-440, which amended this section and Sections 36-25-13 and 36-25-23, provides in § 2: "This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law

and shall apply to public officials elected or re-elected on or after that date." Act 2014-440 was signed by the Governor on April 10, 2014.

In 2014, the Code Commissioner in subdivision (19) inserted a., b., and c. designators for 1., 2., and 3. to conform to code hierarchy style.

CROSS REFERENCES

As to the commission publishing advisory opinions on the requirements of the Code of Ethics, see § 36-25-4(a)(9).

RESEARCH REFERENCES

Treatises and Practice Aids

Service On Regulatory Boards And Commissions Regulating Business With Which Person Associated Is Prohibited, Criminal Offenses and Defenses in Alabama § S40.

Gratuities, Offer To, Or Receipt By, Public Official Or Employee, Criminal Offenses and Defenses in Alabama § G160.

Lobbying And Contracting By Former Official Or Employee, Criminal Offenses and Defenses in Alabama § L100.

Solicitation Or Receipt Of Fees By Public Official, Public Employee, Or Member Of Household Of Public Official, Criminal Offenses and Defenses in Alabama § S170.

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1. Constitutionality

State ethics law is not unconstitutionally vague; law is not so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application. *Langham v. State*, 662 So.2d 1201 (Ala.Crim. App.1994), opinion after remand 662 So.2d 1210, rehearing denied, certiorari denied.

The \$15,000.00 threshold in former subdivision (9) was a rational means for the Legislature to use to reach those public employees entrusted with the most responsibility and the classification passed muster under equal protection challenge. *Gideon v. Alabama State Ethics Commission*, 379 So.2d 570 (Ala.1980).

Since no reasonable relationship could be found between boards in cities with a population of over 15,000, as opposed to cities which did not reach the minimum population mark, with regard to the integrity of board members,

that classification in former subdivision (11) was an arbitrary and capricious one, and thus unconstitutional. Accordingly, that portion of subdivision (11) was unenforceable. *Comer v. City of Mobile*, 337 So.2d 742 (Ala.1976).

2. Construction and application

Industrial Development Board (IDB) members are not compensated and no filing of statements of economic interest is required of them; therefore, the ethics laws regarding such disclosures do not apply to IDB members; however, there is a clear need for the application of the ethics laws to IDB members insofar as they prohibit conflicts of interest, favoritism, and other abuses of public trust. *Harris v. Ethics Com'n of State*, 585 So.2d 93 (Ala. Civ.App.1991).

3. "Business"

County commissioner was not ineligible to vote on an ordinance conferring a financial benefit on his employer, the county board of education, since definition of "business" does not encompass the county board of education. *Gibson v. Southern Guar. Ins. Co.*, 623 So.2d 1065 (Ala.1993).

4. "Candidate"

Winning the nomination is not a prerequisite to becoming a "candidate" for state or elective public office. *Muncaster v. Alabama State Ethics Commission*, 372 So.2d 853 (Ala.1979).

5. "Family member"

Stock of insurance company owned by adult daughter of defendant, state insurance commissioner, who was not his dependent, was not attributable to defendant, as required to support conviction of knowingly and willfully associating with a business he regulated as insurance commissioner based on defendant's interest in company; statutory definition of "family," for purpose of attribution of interest to a public official, in effect at time defendant was insurance commissioner, included only public official's spouse and dependents. *Dill v. State*, 723 So.2d 787 (Ala.Crim.App.1998), rehearing denied. States ⇌ 81

6. "Lobbying"

Although § 36-25-18 prohibits a lobbyist from receiving compensation contingent in nature, contingent contracts are not void as against public policy in Alabama. *Chandler v. Lamar County Bd. of Educ.*, 528 So.2d 309 (Ala.1988).

Alabama's approach to analyzing contingent contracts has been to look first at the face of the contract to determine if there is an appearance of secrecy or deception to be practiced, or

if fraud or corruption has contemplated anything to justify a judicial declaration that it is against fair dealing, good morals, or public policy. *Chandler v. Lamar County Bd. of Educ.*, 528 So.2d 309 (Ala.1988).

Trial court erred in holding that contract between plaintiff and county board of education was void as being against public policy, since the terms of the contract provided that plaintiff would "seek additional revenue from any and all sources" and no evidence was presented to indicate that plaintiff secured additional gas and oil severance tax revenues by lobbying the Alabama Legislature. His efforts were shown to be directed at obtaining for the board a more favorable division of the gas and oil severance tax money after it had been disbursed to the county pursuant to § 40-20-8(a). *Chandler v. Lamar County Bd. of Educ.*, 528 So.2d 309 (Ala.1988).

7. "Public official"

The 1975 amendment merely replaced the definition of "state official" ("any elected official of the legislative, judicial, or executive branch of state government") with the definition of "public official" ("any elected official at the state, county or municipal level of government"). While the amendment did delete specific reference to the judicial branch, it also deleted specific reference to the legislative and executive branches. It now refers instead to "any elected official," which would include elected officials of all three branches. *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala.1992), affirmed 976 F.2d 744.

Members of the Judicial Compensation Commission and the Court of the Judiciary are not subject to the state ethics law; these persons are not "public officials." They are not public officials because they do not fall within any of the definitions of that term contained in the law, not because they are connected with the judicial branch. No appellate decision has held that judges are not covered by the ethics law. *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala. 1992), affirmed 976 F.2d 744.

State ethics law applies to the Governor of the State of Alabama; such application would not violate Governor's constitutional rights, and there was no basis for enjoining the Attorney General from taking such action as he might deem appropriate in the exercise of the duties of his office regarding possible violation of state ethics law by the Governor. *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala.1992), affirmed 976 F.2d 744.

City absentee ballot election manager who received falsely completed applications from defendant was a "public employee" for pur-

poses of the forgery statute, where manager testified that she was appointed by the city council as city clerk, and that part of her duties was to act as election manager and absentee election manager for municipal elections. *Evans v. State*, 794 So.2d 415 (Ala.Crim.App. 2000), rehearing denied, certiorari denied 794 So.2d 441. Forgery ☞ 4

The Legislature intended that the Ethics Act include Industrial Development Boards. *Harris v. Ethics Com'n of State*, 585 So.2d 93 (Ala.Civ.App.1991).

An Industrial Development Board is an "instrumentality" of the city and, therefore, its members are "public officials" for purpose of the ethics laws. *Harris v. Ethics Com'n of State*, 585 So.2d 93 (Ala.Civ.App.1991).

Members of city industrial boards, planning and zoning boards, school boards, boards of adjustment, utility boards, housing boards, public hospital boards, and any boards, commissions, committees, authorities or councils having jurisdiction with respect thereto are not "public officials" and therefore not subject to this chapter. *Bagley v. City of Mobile*, 352 So.2d 1115 (Ala.1977).

Members of the board of bar commissioners of the Alabama state bar, members of the judicial compensation commission and members of the court of the judiciary are not "public officials" within the meaning of that term in this section and thus are not subject to this chapter. *Wright v. Turner*, 351 So.2d 1 (Ala. 1977). Attorney And Client ☞ 32(1)

§ 36-25-1.1. Lobbying.

Lobbying includes promoting or attempting to influence the awarding of a grant or contract with any department or agency of the executive, legislative, or judicial branch of state government.

No member of the Legislature, for a fee, reward, or other compensation, in addition to that received in his or her official capacity, shall represent any person, firm, corporation, or other business entity before an executive department or agency. (Act 2010-762, 1st Sp. Sess., p. 14, § 1.)

HISTORY

Effective date:

The act which added this section is effective January 1, 2011.

LIBRARY REFERENCES

American Digest System:

Lobbying ☞1.

Officers and Public Employees ☞110.

Corpus Juris Secundum:

C.J.S. Constitutional Law §§ 668, 9§ 36, 975.

C.J.S. Contracts § 284.

C.J.S. Corporations § 671.

C.J.S. Elections § 558.

C.J.S. Monopolies §§ 162 to 163.

C.J.S. Officers and Public Employees §§ 334 to 339, 341 to 349.

C.J.S. Statutes § 8.

C.J.S. United States § 37.

§ 36-25-2. Legislative findings and declarations; purpose of chapter.

(a) The Legislature hereby finds and declares:

(1) It is essential to the proper operation of democratic government that public officials be independent and impartial.

(2) Governmental decisions and policy should be made in the proper channels of the governmental structure.

(3) No public office should be used for private gain other than the remuneration provided by law.

(4) It is important that there be public confidence in the integrity of government.

(5) The attainment of one or more of the ends set forth in this subsection is impaired whenever there exists a conflict of interest between the private interests of a public official or a public employee and the duties of the public official or public employee.

(6) The public interest requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of public officials and public employees in situations where conflicts exist.

(b) It is also essential to the proper operation of government that those best qualified be encouraged to serve in government. Accordingly, legal safeguards against conflicts of interest shall be so designed as not to unnecessarily or unreasonably impede the service of those men and women who are elected or appointed to do so. An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.

(c) The Legislature declares that the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to the legislative bodies and to officials of the Executive Branch, their opinions on legislation, on pending governmental actions, and on current issues. To preserve and maintain the integrity of the legislative and administrative processes, it is necessary that the identity, expenditures, and activities of certain persons who engage in efforts to persuade members of the legislative bodies or members of the Executive Branch to take specific actions, either by direct communication to these officials, or by solicitation of others to engage in such efforts, be publicly and regularly disclosed. This chapter shall be liberally construed to promote complete disclosure of all relevant information and to insure that the public interest is fully protected.

(d) It is the policy and purpose of this chapter to implement these objectives of protecting the integrity of all governmental units of this state and of facilitating the service of qualified personnel by prescribing essential restrictions against conflicts of interest in public service without creating unnecessary barriers thereto. (Acts 1973, No. 1056, p. 1699, § 1; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, rewrote this section.

LIBRARY REFERENCES

American Digest System:

Officers and Public Employees ⇌110.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 334 to 339, 341 to 349.

CASENOTES

Generally 1

Conflicts of interests 3

Purpose 2**1. Generally**

State has a legitimate interest in seeing that its elected officials do not have conflicts between their private interests and their official duties. *Muncaster v. Alabama State Ethics Commission*, 372 So.2d 853 (Ala.1979).

2. Purpose

Legislative intent behind the Ethics Act was to strike a balance between the policy of eliminating conflicts of interest and the policy of recruiting and retaining those persons best qualified to serve in government. *Dill v. State*, 723 So.2d 787 (Ala.Crim.App.1998), rehearing denied. *Officers And Public Employees* ⇐ 110

3. Conflicts of interests

Industrial Development Board (IDB) members are not compensated and no filing of

statements of economic interest is required of them; therefore, the ethics laws regarding such disclosures do not apply to IDB members; however, there is a clear need for the application of the ethics laws to IDB members insofar as they prohibit conflicts of interest, favoritism, and other abuses of public trust. *Harris v. Ethics Com'n of State*, 585 So.2d 93 (Ala. Civ.App.1991).

The Legislature intended a conflict of interest to be a necessary element of each ethical violation proscribed in this chapter. *Kirkland v. State*, 529 So.2d 1036 (Ala.Crim.App.1988).

The Legislature passed this chapter to prevent public officials from using their offices to reap private gains. The "conflicts of interests" referred to in this section are conflicts between an official's private interests and his official duties. *Rampey v. State*, 415 So.2d 1184 (Ala.Crim.App.1982).

Cited in *Comer v. City of Mobile*, 337 So.2d 742 (Ala.1976).

§ 36-25-3. State Ethics Commission — Creation, composition; annual reports; compensation; political activities; director; personnel.

(a) There is hereby created a State Ethics Commission composed of five members, each of whom shall be a fair, equitable citizen of this state and of high moral character and ability. The following persons shall not be eligible to be appointed as members: (1) a public official; (2) a candidate; (3) a registered lobbyist and his or her principal; or (4) a former employee of the commission. No member of the commission shall be eligible for reappointment to succeed himself or herself. The members of the commission shall be appointed by the following officers: The Governor, the Lieutenant Governor, or in the absence of a Lieutenant Governor, the Presiding Officer of the Senate, and the Speaker of the House of Representatives. Appointments shall be subject to Senate confirmation and persons appointed shall assume their duties upon confirmation by the Senate. The members of the first commission shall be appointed for terms of office expiring one, two, three, four, and five years, respectively, from September 1, 1975. Successors to the members of the first commission shall serve for a term of five years beginning service on September 1 of the year appointed and serving until their successors are appointed and confirmed. If at any time there should be a vacancy on the commission, a successor member to serve for the unexpired term applicable to such vacancy shall be appointed by the Governor. The commission shall elect one member to serve as chair of the commission and one member to serve as vice chair. The vice chair shall act as chair in the absence or disability of the chair or in the event of a vacancy in that office.

Beginning with the first vacancy on the Ethics Commission after October 1, 1995, if there is not a Black member serving on the commission, that vacancy shall be filled by a Black appointee. Any vacancy thereafter occurring on the

commission, shall also be filled by a Black appointee if there is no Black member serving on the commission at that time.

Beginning with the first vacancy on the State Ethics Commission after January 1, 2011, the commission shall always have as a member a State of Alabama-licensed attorney in good standing.

(b) A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission, and three members thereof shall constitute a quorum.

(c) The commission shall at the close of each fiscal year, or as soon thereafter as practicable, report to the Legislature and the Governor concerning the actions it has taken, the name, salary, and duties of the director, the names and duties of all individuals in its employ, the money it has disbursed, other relevant matters within its jurisdiction, and such recommendations for legislation as the commission deems appropriate.

(d) Members of the commission, while serving on the business of the commission, shall be entitled to receive compensation at the rate of fifty dollars (\$50) per day, and each member shall be paid his or her travel expenses incurred in the performance of his or her duties as a member of the commission as other state employees and officials are paid when approved by the chair. If for any reason a member of the commission wishes not to claim and accept the compensation or travel expenses, the member shall inform the director, in writing, of the refusal. The member may at any time during his or her term begin accepting compensation or travel expenses; however, the member's refusal for any covered period shall act as an irrevocable waiver for that period.

(e) All members, officers, agents, attorneys, and employees of the commission shall be subject to this chapter. The director, members of the commission, and all employees of the commission may not engage in partisan political activity, including the making of campaign contributions, on the state, county, and local levels. The prohibition shall in no way act to limit or restrict such persons' ability to vote in any election.

(f) The commission shall appoint a full-time director. Appointment of the director shall be subject to Senate confirmation, and the person appointed shall assume his or her duties upon confirmation by the Senate. If the Senate fails to vote on an appointee's confirmation before adjourning sine die during the session in which the director is appointed, the appointee is deemed to be confirmed. No appointee whose confirmation is rejected by the Senate may be reappointed. The director shall serve at the pleasure of the commission and shall appoint such other employees as needed. All such employees, except the director, shall be employed subject to the state Merit System law, and their compensation shall be prescribed pursuant to that law. The employment of attorneys shall be subject to subsection (h). The compensation of the director shall be fixed by the commission, payable as the salaries of other state employees. The director shall be responsible for the administrative operations of the commission and shall administer this chapter in accordance with

the commission's policies. No rule shall be implemented by the director until adopted by the commission in accordance with Sections 41-22-1 to 41-22-27, inclusive, the Alabama Administrative Procedure Act.

(g) The director may appoint part-time stenographic reporters or certified court reporters, as needed, to take and transcribe the testimony in any formal or informal hearing or investigation before the commission or before any person authorized by the commission. The reporters are not full-time employees of the commission, are not subject to the Merit System law, and may not participate in the State Retirement System.

(h) The director, with the approval of the Attorney General, may appoint a competent attorney as legal counsel for the commission. The legal counsel shall be of good moral and ethical character, licensed to practice law in this state, and a member in good standing of the Alabama Bar Association. The legal counsel shall be commissioned as an assistant or deputy attorney general and, in addition to the powers and duties herein conferred, shall have the authority and duties of an assistant or deputy attorney general, except, that his or her entire time shall be devoted to the commission. The attorney shall act as an attorney for the commission in actions or proceedings brought by or against the commission pursuant to any law under the commission's jurisdiction or in which the commission joins or intervenes as to a matter within the commission's jurisdiction or as a friend of the court or otherwise.

(i) The director shall designate in writing the chief investigator, should there be one, and a maximum of six full-time investigators who shall be and are hereby constituted law enforcement officers of the State of Alabama with full and unlimited police power and jurisdiction to enforce the laws of this state pertaining to the operation and administration of the commission and this chapter. Investigators shall meet the requirements of the Alabama Peace Officers' Standards and Training Act, Sections 36-21-40 to 36-21-51, inclusive, and shall in all ways and for all purposes be considered law enforcement officers entitled to all benefits provided in Section 36-15-6(f). Notwithstanding the foregoing, the investigators shall only exercise their power of arrest as granted under this chapter pursuant to an order issued by a court of competent jurisdiction. (Acts 1973, No. 1056, p. 1699, § 17; Acts 1995, No. 95-194, p. 269, § 1; Act 2009-225, p. 401, § 1; Act 2010-763, 1st Sp. Sess., p. 17, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, rewrote this section.

The 2009 amendment, effective April 8, 2009, in subsection (i) inserted "entitled to all benefits provided in Section 36-15-6(f)".

The 2010 amendment, effective January 1, 2011, in subsection (a) deleted the third sentence, and substituted "Representatives. Appointments shall be subject to Senate confirmation and persons appointed" for "Representatives and";

added the second undesignated subsection; in subsection (d) substituted "commission, while" for "commission shall, while", substituted "commission, shall be" for "commission, be"; in subsection (e) substituted "may not engage in" for "shall not engage in direct"; in subsection (f) deleted the second, third and fourth sentences, deleted "provisions of the" preceding "state Merit System", and substituted "rule" for "regulation"; in subsection (g) substituted "are not" for "shall not be", substituted "commission, are not" for "commission and shall not be", and

substituted "law," for "law"; in subsection (h) substituted "director," for "director may," substituted "may appoint" for "appoint", substituted "general and" for "general and shall", substituted "conferred, shall" for "conferred," deleted "provisions of", following "pursuant to any", substituted "jurisdiction or" for "jurisdiction, or" in two places, and substituted "otherwise" for "otherwise; provided however, nothing in this chapter shall be deemed as a direct grant of subpoena power to the commission"; and in subsection (i) substituted "36-15-6(f). Notwithstanding the foregoing, the" for "36-15-6(f); provided however such".

CROSS REFERENCES

As to the duty to report any explicit directives regarding a pass-through appropriation, see § 41-19A-5.

LIBRARY REFERENCES

American Digest System:

Officers and Public Employees ⇌110.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 334 to 339, 341 to 349.

§ 36-25-4. State Ethics Commission — Duties; complaint; investigation; hearing; fees; finding of violation.

(a) The commission shall do all of the following:

(1) Prescribe forms for statements required to be filed by this chapter and make the forms available to persons required to file such statements.

(2) Prepare guidelines setting forth recommended uniform methods of reporting for use by persons required to file statements required by this chapter.

(3) Accept and file any written information voluntarily supplied that exceeds the requirements of this chapter.

(4) Develop, where practicable, a filing, coding, and cross-indexing system consistent with the purposes of this chapter.

(5) Make reports and statements filed with the commission available during regular business hours and online via the Internet to public inquiry subject to such regulations as the commission may prescribe.

(6) Preserve reports and statements for a period consistent with the statute of limitations as contained in this chapter. The reports and statements, when no longer required to be retained, shall be disposed of by shredding the reports and statements and disposing of or recycling them, or otherwise disposing of the reports and statements in any other manner prescribed by law. Nothing in this section shall in any manner limit the Department of Archives and History from receiving and retaining any documents pursuant to existing law.

(7) Make investigations with respect to statements filed pursuant to this chapter, and with respect to alleged failures to file, or omissions contained therein, any statement required pursuant to this chapter and, upon complaint by any individual, with respect to alleged violation of any part of this chapter to the extent authorized by law. When in its opinion a thorough audit of any person or any business should be made in order to determine whether this chapter has been violated, the commission shall direct the Examiner of Public Accounts to have an audit made and a report thereof filed with the commission. The Examiner of Public Accounts, upon receipt of the directive, shall comply therewith.

(8) Report suspected violations of law to the appropriate law-enforcement authorities.

(9) Issue and publish advisory opinions on the requirements of this chapter, based on a real or hypothetical set of circumstances. Such advisory opinions shall be adopted by a majority vote of the members of the commission present and shall be effective and deemed valid until expressly overruled or altered by the commission or a court of competent jurisdiction. The written advisory opinions of the commission shall protect the person at whose request the opinion was issued and any other person reasonably relying, in good faith, on the advisory opinion in a materially like circumstance from liability to the state, a county, or a municipal subdivision of the state because of any action performed or action refrained from in reliance of the advisory opinion. Nothing in this section shall be deemed to protect any person relying on the advisory opinion if the reliance is not in good faith, is not reasonable, is not in a materially like circumstance. The commission may impose reasonable charges for publication of the advisory opinions and monies shall be collected, deposited, dispensed, or retained as provided herein. On October 1, 1995, all prior advisory opinions of the commission in conflict with this chapter, shall be ineffective and thereby deemed invalid and otherwise overruled unless there has been any action performed or action refrained from in reliance of a prior advisory opinion.

(10) Initiate and continue, where practicable, programs for the purpose of educating candidates, officials, employees, and citizens of Alabama on matters of ethics in government service.

(11) In accordance with Sections 41-22-1 to 41-22-27, inclusive, the Alabama Administrative Procedure Act, prescribe, publish, and enforce rules to carry out this chapter.

(b) Except as necessary to permit the sharing of information and evidence with the Attorney General or a district attorney, a complaint filed pursuant to this chapter, together with any statement, evidence, or information received from the complainant, witnesses, or other persons shall be protected by and subject to the same restrictions relating to secrecy and nondisclosure of information, conversation, knowledge, or evidence of Sections 12-16-214 to 12-16-216, inclusive, except that a violation of this section shall constitute a Class C felony. Such restrictions shall apply to all investigatory activities taken by the director, the commission, or a member thereof, staff, employees, or any person engaged by the commission in response to a complaint filed with the commission and to all proceedings relating thereto before the commission. Such restrictions shall also apply to all information and evidence supplied to the Attorney General or district attorney.

(c) The commission shall not take any investigatory action on a telephonic or written complaint against a respondent so long as the complainant remains anonymous. Investigatory action on a complaint from an identifiable source shall not be initiated until the true identity of the source has been ascertained and written verification of such ascertainment is in the commission's files.

The complaint may only be filed by a person who has or persons who have credible and verifiable information supporting the allegations contained in the complaint. A complainant may not file a complaint for another person or persons in order to circumvent this subsection. 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 the complaint, on its face alleges facts which if true, would constitute a violation of this chapter and that reasonable cause exists to conduct an investigation. If the director determines that the complaint does not allege a violation or that reasonable cause does not exist, the charges shall be dismissed, but such action must be reported to the commission. The commission shall be entitled to authorize an investigation upon written consent of four commission members, upon an express finding that probable cause exists that a violation or violations of this chapter have occurred. Upon the commencement of any investigation, the Alabama Rules of Criminal Procedure as applicable to the grand jury process promulgated by the Alabama Supreme Court shall apply and shall remain in effect until the complaint is dismissed or disposed of in some other manner. A complaint may be initiated by a vote of four members of the commission, provided, however, that the commission shall not conduct the hearing, but rather the hearing shall be conducted by three active or retired judges, who shall be appointed by the Chief Justice of the Alabama Supreme Court, at least one of whom shall be Black. The three-judge panel shall conduct the hearing in accordance with the procedures contained in this chapter and in accordance with the rules of the commission. If the three-judge panel unanimously finds that a person covered by this chapter has violated it, the three-judge panel shall forward the case to the district attorney for the jurisdiction in which the alleged acts occurred or to the Attorney General. In all matters that come before the commission concerning a complaint on an individual, the laws of due process shall apply.

(d) Not less than 45 days prior to any hearing before the commission, the respondent shall be given notice that a complaint has been filed against him or her and shall be given a summary of the charges contained therein. Upon the timely request of the respondent, a continuance of the hearing for not less than 30 days shall be granted for good cause shown. The respondent charged in the complaint shall have the right to be represented by retained legal counsel. The commission may not require the respondent to be a witness against himself or herself.

(e) The commission shall provide discovery to the respondent pursuant to the Alabama Rules of Criminal Procedure as promulgated by the Alabama Supreme Court.

(f)(1) All fees, penalties, and fines collected by the commission pursuant to this chapter shall be deposited into the State General Fund.

(2) All monies collected as reasonable payment of costs for copying, reproductions, publications, and lists shall be deemed a refund against disbursement and shall be deposited into the appropriate fund account for the use of the commission.

(g) In the course of an investigation, the commission may subpoena witnesses and compel their attendance and may also require the production of books, papers, documents, and other evidence. If any person fails to comply with any subpoena lawfully issued, or if any witness refuses to produce evidence or to testify as to any matter relevant to the investigation, it shall be the duty of any court of competent jurisdiction or the judge thereof, upon the application of the director, to compel obedience upon penalty for contempt, as in the case of disobedience of a subpoena issued for such court or a refusal to testify therein. A subpoena may be issued only upon the vote of four members of the commission upon the express written request of the director. The subpoena shall be subject to Rules 17.1, 17.2, 17.3, and 17.4 of the Alabama Rules of Criminal Procedure. The commission upon seeking issuance of the subpoena shall serve a notice to the recipient of the intent to serve such subpoena. Upon the expiration of 10 days from the service of the notice and the proposed subpoena shall be attached to the notice. Any person or entity served with a subpoena may serve an objection to the issuance of the subpoena within 10 days after service of the notice on the grounds set forth under Rule 17.3(c) of the Alabama Rules of Criminal Procedure, and in such event the subpoena shall not issue until an order to dismiss, modify, or issue the subpoena is entered by a state court of proper jurisdiction, the order to be entered within 30 days after making of the objection. Any vote taken by the members of the commission relative to the issuance of a subpoena shall be protected by and subject to the restrictions relating to secrecy and nondisclosure of information, conversation, knowledge, or evidence of Sections 12-16-214 to 12-16-216, inclusive.

(h) After receiving or initiating a complaint, the commission has 180 days to determine whether probable cause exists. At the expiration of 180 days from the date of receipt or commencement of a complaint, if the commission does not find probable cause, the complaint shall be deemed dismissed and cannot be reinstated based on the same facts alleged in the complaint. Upon good cause shown from the general counsel and chief investigator, the director may request from the commission a one-time extension of 180 days. Upon the majority vote of the commission, the staff may be granted a one-time extension of 180 days in which to complete the investigation. If the commission finds probable 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 Attorney General. The case, along with the commission's findings, shall be referred for appropriate legal action. Nothing in this section shall be deemed to limit the commission's ability to take appropriate legal action when so requested by the district attorney for the appropriate jurisdiction or by the Attorney General.

(i) Within 180 days of receiving a case referred by the commission, the Attorney General or district attorney to whom the case was referred may, upon written request of the commission notify the commission, in writing, stating whether he or she intends to take action against the respondent, including an administrative disposition or settlement, conduct further investigation, or close the case without taking action. If the Attorney General or district attorney decides to pursue the case, he or she, upon written request of the commission, may inform the commission of the final disposition of the case. The written information pursuant to this section shall be maintained by the commission and made available upon request as a public record. The director may request an oral status update from the Attorney General or district attorney from time to time. (Acts 1973, No. 1056, p. 1699, § 18; Acts 1975, No. 130, p. 603, § 1; Acts 1979, No. 79-460, p. 814, § 1; Acts 1995, No. 95-194, p. 269, § 1; Act 2010-763, 1st Sp. Sess., p. 17, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, rewrote this section.

The 2010 amendment, effective January 1, 2011, in subsection (a), in subdivision (5) inserted "and online via the Internet" and deleted "including, but not limited to, regulations requiring identification by name, occupation, address, and telephone number of each person examining information on file with the commission" following "prescribe", in subdivision (7) substituted "law. When" for "law when", substituted "Accounts" for "Accounts shall" and inserted "shall" preceding "comply", and in subdivision (11) deleted "and regulations" following "rules"; in subsection (b) substituted "Except as necessary to permit the sharing of information and evidence with the Attorney General or a district attorney, a" for "A", inserted ", except that a violation of this section shall constitute a Class C felony", substituted "commission, or" for "commission or", and added the final sentence; in subsection (c) substituted "credible and verifiable information supporting" for "actual knowledge of", substituted "charges;" for "charges", inserted "the complaint, on its face alleges facts which if true, would constitute a violation of this chapter and that", inserted "that the complaint does not allege a violation or that", substituted "written consent of four" for "a unanimous written consent of all five (5)", inserted the eighth sentence, substituted "a vote of four members" for "the unanimous vote", substituted "three active" for "three (3) active", substituted "three-judge" for "three (3) judge" in three places, and deleted "and regulations" following "rules"; redesignated subsection (g) as subsection (h); added subsections (g) and (i); and in subsection (h) added

the first four sentences, and inserted "probable".

Code Commissioner's Notes

Section 4 of Act 2010-764 provides: "The State Ethics Commission shall report to the Legislature by the fifth legislative day of the 2011 Regular Session what other states have done to strengthen their State Ethics Law."

CROSS REFERENCES

As to certain pre-certified functions or activities excluded from definition of "thing of value," see § 36-25-1(34)b.15.

LIBRARY REFERENCES

American Digest System:

Officers and Public Employees ¶110.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 334 to 339, 341 to 349.

RESEARCH REFERENCES

Treatises and Practice Aids

Ethics Violations, Criminal Offenses and Defenses in Alabama § E110.

CASENOTES

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Reports 4

1. Generally

Where an investigation leads to the finding that the person under investigation has not violated any state ethics laws, upon such a

finding, the commission's authority and power to discipline such person ceases. *Ethics Com'n of State of Ala. v. State ex. rel. Deutchsh*, 494 So.2d 606 (Ala.1986).

2. Due process requirements

When an investigation and hearing are conducted by the commission, under certain circumstances, the subject must be afforded due process rights in the proceeding; failure to do so would constitute a violation of that person's constitutional rights. *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala.1992), affirmed 976 F.2d 744.

When commission's method of investigation is sufficiently accusatory in nature, some form of due process protection is required, despite the fact that the function of the commission is not "adjudicatory." *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala.1992), affirmed 976 F.2d 744.

3. Hearing

A district attorney or the Attorney General may prosecute a person for violating the ethics law without the commission first investigating the matter, and a prosecution may be initiated even if the commission finds no probable cause. So, a probable cause hearing with due process protection is not a prerequisite to prosecution. *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala.1992), affirmed 976 F.2d 744. *Constitutional Law* ⇌ 4569; *States* ⇌ 72

Although the ethics commission has authority to investigate and report suspected violations to appropriate law enforcement authorities, nowhere is it mandated that the commission has any authority to prosecute; therefore, a hearing before the commission is not a due process requirement. *Allen v. State*, 380 So.2d 313 (Ala.Crim.App.1979), writ denied 380 So.2d 341, certiorari denied 101 S.Ct. 121, 449 U.S. 842, 66 L.Ed.2d 49.

4. Reports

Statutes specifying the procedure for the Ethics Commission to follow to report suspected violations of law authorize the Ethics Commission to refer directly to the Attorney General only those complaints filed by others than the Ethics Commission itself, not complaints initiated in-house by the Ethics Commission, which are governed by the strictures and safeguards of the provision mandating referral to a three-judge panel. *Ex parte E.J.M.*, 829 So.2d 105 (Ala.2001), rehearing denied. *Officers And Public Employees* ⇌ 110

Nowhere does this section authorize the ethics commission to issue reprimands in the form of public written opinions in complaint cases.

Only when there is a finding of a "suspected violation" of the state ethics laws is the commission authorized to make a report. Even then, the report is to be made only to the appropriate law enforcement authorities. *Ethics Com'n of State of Ala. v. State ex. rel. Deutchsh*, 494 So.2d 606 (Ala.1986).

5. Advisory opinions

The fact that Advisory Opinions issued by the commission during the administrations of other Governors apparently placed no restrictions whatsoever on the use of state aircraft by a Governor and his family may be an important consideration in determining whether to seek an indictment, whether to indict, or whether to convict. *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala.1992), affirmed 976 F.2d 744.

Advisory opinions issued by Ethics Commission are not law, but they may protect certain persons from liability under Ethics Act. *Fitch v. State*, 851 So.2d 103 (Ala.Crim.App.2001), rehearing denied, certiorari denied 851 So.2d 141. *Officers And Public Employees* ⇌ 110

6. Disclosure of information

Ethics Commission could not disclose confidential information about attorney, who was former director of Ethics Commission, and who was under investigation by Commission for alleged unethical conduct, except pursuant to authority of law. *Ex parte E.J.M.*, 829 So.2d 105 (Ala.2001), rehearing denied. *Attorney And Client* ⇌ 48

Former subsection (13) was designed to protect innocent individuals who are under investigation from the harm that could result to their reputations and careers if information regarding the investigation were released to the public. *Ethics Com'n of State of Ala. v. State ex. rel. Deutchsh*, 494 So.2d 606 (Ala. 1986).

Former subsection (13) of the statute did not impliedly or inferentially allow members or employees of the commission to make public statements following final action on the complaint about which the statement was made. *Ethics Com'n of State of Ala. v. State ex. rel. Deutchsh*, 494 So.2d 606 (Ala.1986).

7. Particular circumstances

Candidates failed to show violation of Voting Rights Act on theory that the Alabama Ethics Commission did not comply with precleared Alabama statute which prescribes the duties of the Commission, and that this alleged noncompliance was a change in voting procedure that the state should have submitted for preclearance but did not, even though there was evi-

dence that some candidates complained about difficulty in obtaining statement-of-economic-interests forms, where there was no evidence showing that the Commission has enacted a new policy under which it would no longer prescribe and make available forms, prescribe guidelines, and educate prospective candidates as to the requirements of the Alabama Ethics Law. *Ritter v. Bennett*, 23 F.Supp.2d 1334 (M.D.Ala.1998). Election Law ☞ 622

Attorney general's investigation of law firm and attorney, who was former director of Ethics Committee, and convening of grand jury

were illegal as fruit of poisonous tree, even though statute provided that attorney general could enforce statutes governing attorney ethics, where Ethics Commission illegally referred investigation to attorney general, and attorney general did not claim any independent knowledge of wrongdoing by attorney. *Ex parte E.J.M.*, 829 So.2d 105 (Ala.2001), rehearing denied. Officers And Public Employees ☞ 110

Cited in *Underwood v. State*, 439 So.2d 125 (Ala.1983); *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala.1992).

§ 36-25-4.1. State Ethics Commission — Public access to complaint, investigation, and disposition.

Notwithstanding any other law, regulation, or rule, no complaints shall be made available to the public or available on the Internet until the disposition of the matter. In no event may a complaint be made public or available on the Internet if the complaint is dismissed or found not to have probable cause. In the matters where the complaint is dismissed or found not to have probable cause, only the disposition of the matter may be made available to the public or available on the Internet. Nothing in this section shall be deemed a direct grant of authority for the commission to publicize or make available on the Internet any complaint or investigation if not permitted by any other law, regulation, or rule. (Act 2010-763, 1st Sp. Sess., p. 17, § 2.)

HISTORY

Effective date:

The act which added this section is effective January 1, 2011.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 334 to 339, 341 to 349.

LIBRARY REFERENCES

American Digest System:

Officers and Public Employees ☞110.

§ 36-25-4.2. State Ethics Commission — State Ethics Law training programs.

(a) At the beginning of each legislative quadrennium, the State Ethics Commission shall provide for and administer training programs on the State Ethics Law for members of the Legislature, state constitutional officers, cabinet officers, executive staff, municipal mayors, council members and commissioners, county commissioners, and lobbyists.

(1) The training program for legislators shall be held at least once at the beginning of each quadrennium for members of the Legislature. An additional training program shall be held if any changes are made to this chapter, and shall be held within three months of the effective date of the changes. The time and place of the training programs shall be determined by the Executive Director of the State Ethics Commission and the Legislative Council. Each legislator must attend the training programs. The State Ethics Commission shall also provide a mandatory program for any

legislator elected in a special election within three months of the date that the legislator assumes office.

(2) The training program for the state constitutional officers, cabinet members, and executive staff, as determined by the Governor, shall be held within the first 30 days after the Governor has been sworn into office. An additional training program shall be held if any changes are made to this chapter, and shall be held within three months of the effective date of the changes. The specific date of the training program shall be established by the Executive Director of the State Ethics Commission with the advice of the Governor and other constitutional officers.

(3) The training program for lobbyists shall be held four times annually as designated by the Executive Director of the State Ethics Commission, the first of which shall be held within the first 30 days of the year. Each lobbyist must attend a training program within 90 days of registering as a lobbyist. A lobbyist who fails to attend a training program shall not be allowed to lobby the Legislature, Executive Branch, Judicial Branch, public officials, or public employees. After attending one training program, a lobbyist shall not be required to attend an additional training program unless any changes are made to this chapter. Such additional mandatory training program shall be held within three months of the effective date of the changes.

(4) All municipal mayors, council members and commissioners, county commissioners, and members of any local board of education in office as of January 1, 2011, shall obtain training within 120 days of that date. Thereafter, all municipal mayors, council members and commissioners, and county commissioners shall obtain training within 120 days of being sworn into office. Training shall be available online and may be conducted either online or in person. Evidence of completion of the training shall be provided to the commission via an electronic reporting system provided on the official website. The scheduling of training opportunities for municipal mayors, council members and commissioners, and county commissioners shall be established by the Executive Director of the State Ethics Commission with the advice and assistance of the Alabama League of Municipalities and the Association of County Commissions of Alabama. Any provision of this section to the contrary notwithstanding, the training for county commissioners required by this subdivision shall be satisfied by the successful completion of the 10-hour course on ethical requirements of public officials provided by the Alabama Local Government Training Institute established pursuant to Article 2 of Chapter 3 of Title 11. The Alabama Local Government Training Institute shall quarterly provide written notice to the State Ethics Commission the names of those county commissioners completing the institute's program.

(b) The curriculum of each session and faculty for the training program shall be determined by the Executive Director of the State Ethics Commission. The curriculum shall include, but not be limited to, a review of the current law, a discussion of actual cases and advisory opinions on which the

State Ethics Commission has ruled, and a question and answer period for attendees. The faculty for the training program may include the staff of the State Ethics Commission, members of the faculties of the various law schools in the state, and other persons deemed appropriate by the Executive Director of the State Ethics Commission and shall include experts in the field of ethics law, persons affected by the ethics law, and members of the press and media.

(c) Except as provided herein, attendance at any session of the training program shall be mandatory, except in the event the person is suffering a catastrophic illness.

(d) This section shall not preclude the penalizing, prosecution, or conviction of any member of the Legislature, any public official, or public employee prior to such person attending a mandatory training program.

(e) All public employees required to file the Statement of Economic Interests required by Section 36-25-14, no later than May 1, 2011, shall participate in an online educational review of the Alabama Ethics Law provided on the official website of the commission. Employees hired after January 1, 2011, shall have 90 days to comply with this subsection. Evidence of completion of the educational review shall be provided to the commission via an electronic reporting system provided on the official website. (Act 2010-762, 1st Sp. Sess., p. 14, § 2.)

HISTORY

Effective date:

The act which added this section is effective January 1, 2011.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 334 to 339, 341 to 349.

LIBRARY REFERENCES

American Digest System:

Officers and Public Employees ⇨110.

§ 36-25-4.3. Ethics Commission — Electronic database filing and access.

(a) The commission, by April 1, 2012, shall implement and maintain each of the following:

(1) A system for electronic filing of all statements, reports, registrations, and notices required by this chapter.

(2) An electronic database accessible to the public through an Internet website which provides at least the following capabilities:

a. Search and retrieval of all statements, reports, and other filings required by this chapter, excluding complaints made confidential by Section 36-25-4(b), by the name of the public official or public employee to which they pertain.

b. Generation of an aggregate list of all things of value provided to each public official or public employee and family member of a public official or public employee as reported pursuant to Section 36-25-19, searchable and retrievable by the name of the public official or public employee.

(b) Notwithstanding subsection (a), the commission shall exclude from any electronic database accessible to the public, identifying information, as defined in Section 41-13-7, that is included in any statement of economic interest filed by any public official or public employee.

(c) The commission shall redact all identifying information on any electronic database accessible to the public, as defined in Section 41-13-7, that is included in any statement of economic interest filed by a public official or public employee and was in the database on August 1, 2013. (Act 2010-762, 1st Sp. Sess., p. 14, § 3; Act 2013-172, § 1; Act 2014-71, § 1.)

HISTORY

Effective date:

The act which added this section is effective January 1, 2011.

Amendment notes:

The 2013 amendment, effective August 1, 2013, inserted the subsection (a) designator, and added subsection (b).

The 2014 amendment, effective February 25, 2014, added subsection (c).

LIBRARY REFERENCES

American Digest System:

Officers and Public Employees ¶110.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 334 to 339, 341 to 349.

§ 36-25-5. Use of official position or office for personal gain.

(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.

(b) Unless prohibited by the Constitution of Alabama of 1901, nothing herein shall be construed to prohibit a public official from introducing bills, ordinances, resolutions, or other legislative matters, serving on committees, or making statements or taking action in the exercise of his or her duties as a public official. A member of a legislative body may not vote for any legislation in which he or she knows or should have known that he or she has a conflict of interest.

(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.

(d) No person shall solicit a public official or public employee to use or cause to be used equipment, facilities, time, materials, human labor, or other public property for such person's private benefit or business benefit, which would materially affect his or her financial interest, except as otherwise provided by law.

(e) No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity.

(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. (Acts 1973, No. 1056, p. 1699, § 3; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Act 2000-797, p. 1895, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, rewrote this section.

The 2000 amendment, effective August 1, 2000, in subsection (c) added the final sentence.

CROSS REFERENCES

As to prohibition against members of municipal councils voting on questions in which they or their employers have special financial interests, see § 11-43-54.

As to concurrent employment in the private sector, see § 36-1-11.

LIBRARY REFERENCES

American Digest System:

Officers and Public Employees ⇨121.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 445 to 452.

RESEARCH REFERENCES

Treatises and Practice Aids

Use Of Official Position Or Office For Personal Gain, Criminal Offenses and Defenses in Alabama § U80.

CASENOTES

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1. Generally

A violation of this section occurs at the moment an Alabama public official knowingly or willfully "obtains direct personal gain" from the use of his office. *Hunt v. Tucker*, 875 F.Supp. 1487 (N.D.Ala.1995), affirmed 93 F.3d 735.

Section 82 of the Alabama Constitution, providing that a member of the Legislature who has a personal or private interest in any measure or bill proposed or pending before the Legislature may not vote thereon, applies to the actions of legislators who have a substantial financial interest, namely, ownership or control of an interest greater than 5% of the value of any business entity that is uniquely affected by proposed or pending legislation. *Opinion of the Justices No. 368*, 716 So.2d 1149 (Ala.1998). Statutes ⇨ 1031

It is constitutional for an educator/legislator to vote on a pay raise for teachers, at least so long as the bill does not affect the legislator in a way different from the way it affects the

other members of the class to which he belongs. Opinion of the Justices No. 317, 474 So.2d 700 (Ala.1985).

2. Constitutionality

Governor's constitutional right to freedom of religion and to equal protection was not violated by application to him of the ethics law. *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala.1992), affirmed 976 F.2d 744.

The proscription that "[no] public official ... shall use an official position or office to obtain direct personal financial gain for himself" is not "so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application." Therefore, the statute does not violate due process of law on the basis of vagueness. *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala.1992), affirmed 976 F.2d 744.

Statute that prohibited the use of official position or office for personal gain was not unconstitutionally vague as applied to defendant, who was a basketball coach at a state community college, and was indicted for allegedly violating statute by giving financial aid or tuition credits to his wife, even if the phrase "personal gain" might be unclear in some situations; statute did not completely prohibit defendant's wife from receiving personal gain through otherwise innocent acts that were not specifically authorized by law, rather, statute prohibited defendant only from using or causing to be used his official position or office to obtain personal gain for his wife. *State v. Turner*, 96 So.3d 876 (Ala.Crim.App.2011), rehearing denied, certiorari denied. Constitutional Law ⇌ 1137; Education ⇌ 1134

3. Construction and application

Defendants were subject to state ethics law where they were employed by city water works and sewer board; board was a "utility board" subject to state ethics law regardless of whether it was a creature of incorporation or whether it was established by city ordinance. *Langham v. State*, 662 So.2d 1201 (Ala.Crim.App.1994), opinion after remand 662 So.2d 1210, rehearing denied, certiorari denied. Municipal Corporations ⇌ 205; Municipal Corporations ⇌ 206

4. Elements of offense

Proof that personal financial gain was realized from public funds is not an element of offense of using public office for personal gain, nor is it descriptive of fact or degree of offense, nor is it material to jurisdiction, and thus, an allegation of obtaining public funds, in an indictment for using public office for personal gain, is mere surplusage which may be disre-

garded. *Fitch v. State*, 851 So.2d 103 (Ala.Crim.App.2001), rehearing denied, certiorari denied 851 So.2d 141. Officers And Public Employees ⇌ 121; Officers And Public Employees ⇌ 122

5. Improper representation

A district attorney's conduct in prosecuting a criminal case as a public employee and later representing a third party in a civil suit against the same criminal defendant arising from the same set of facts is a breach of his public duty regardless of whether the civil client was a new or retained employer. In re *Peiffer*, 27 B.R. 675 (Bkrcty.N.D.Ala.1982). Attorney And Client ⇌ 32(7)

It is improper for an assistant district attorney, acting in his capacity as a public employee, to prosecute a defendant criminally and simultaneously represent the victim in a civil action against the same defendant based on the identical underlying occurrence. In re *Peiffer*, 27 B.R. 675 (Bkrcty.N.D.Ala.1982).

6. Admissibility of evidence

Expert testimony of counsel for Ethics Commission, concerning ultimate issue of whether alleged direct personal financial gain of county commissioner who voted to award contract was specifically authorized by law, was admissible, in prosecution for using public office for personal gain; expert testimony on that issue, which the defense was free to contradict, was reasonably likely to have assisted jury in understanding and in assessing evidence, in that matter at issue was highly material, and beyond the realm of acquired knowledge normally possessed by lay jurors. *Fitch v. State*, 851 So.2d 103 (Ala.Crim.App.2001), rehearing denied, certiorari denied 851 So.2d 141. Criminal Law ⇌ 470(2)

7. Sufficiency of evidence

Accomplice's testimony in trial of defendant, who was a former county commissioner and charged with using his position to unlawfully obtain personal gain by hiring a contractor to perform work for his district in return for monetary payments, was insufficient to establish that defendant violated state ethics law; the accomplice, who was also a county commissioner and testified pursuant to a plea agreement, was unequivocal in his statement that he had no knowledge whatsoever of any participation by defendant in the scheme in which accomplice, other county commissioner, and general contractor were participating. *Ex parte Stewart*, 900 So.2d 475 (Ala.2004). Criminal Law ⇌ 508(9)

Assuming that accomplice's testimony in trial of defendant, who was a former county com-

missioner and charged with using his position to unlawfully obtain personal gain by hiring a contractor to perform work for his district in return for monetary payments, sufficiently implicated defendant in accomplice's scheme, the corroborating evidence did not connect the defendant with the criminal activity; there was no evidence that defendant participated in the scheme, there was no evidence that defendant engaged in any unusual activity with regard to the county's check-writing procedures, and evidence from county employees supported defendant's use of general contractor on road construction project. *Ex parte Stewart*, 900 So.2d 475 (Ala.2004). Criminal Law ⇌ 511.2

There was sufficient evidence to show that police officer was paid to ride "shotgun" with drug enforcement agent because he was a police officer, not merely to use his badge, and furthermore, he was paid for each trip, regardless of whether he was called upon to use his badge. *Long v. State*, 615 So.2d 114 (Ala. Crim.App.1992), certiorari denied, certiorari denied 114 S.Ct. 179, 510 U.S. 862, 126 L.Ed.2d 138.

Although evidence showed that appellant could have sold the property for \$28,000 more than he received, the state sufficiently proved gain where the appellant had owned the property since 1948, and he most likely received gain in terms of taxable income upon the sale of the property. *Chandler v. State*, 615 So.2d 100 (Ala.Crim.App.1992), certiorari denied 615 So.2d 111.

8. Practice and procedure

Clearly, under Alabama law the indictment should have been dismissed because it failed to allege an essential element of the offense as specifically included in the statutory language of this section and § 36-25-27(a), the Ethics Act. *Hunt v. Tucker*, 875 F.Supp. 1487 (N.D.Ala.1995), affirmed 93 F.3d 735.

There is no doubt that the use of one's public office to obtain "direct personal financial gain" is a criminal offense only if done "knowingly or willingly." Thus, scienter is an essential element of the statutory offense and that essential element is expressly required by the Ethics Act. *Hunt v. Tucker*, 875 F.Supp. 1487 (N.D.Ala.1995), affirmed 93 F.3d 735. *Officers And Public Employees* ⇌ 121

When commission's method of investigation is sufficiently accusatory in nature, some form of due process protection is required, despite the fact that the function of the commission is not "adjudicatory." *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala.1992), affirmed 976 F.2d 744.

Any error in admitting expert testimony of counsel for Ethics Commission, concerning ultimate issue of whether alleged direct personal financial gain of defendant who was county commissioner who voted to award contract was specifically authorized by law, was harmless error, in prosecution for using public office for personal gain, where defendant was found not guilty of voting to award contract, and trial court gave curative instruction. *Fitch v. State*, 851 So.2d 103 (Ala.Crim.App.2001), rehearing denied, certiorari denied 851 So.2d 141. Criminal Law ⇌ 1169.9

The jury's verdicts finding defendant guilty of the violation of the Ethics Act and not guilty of theft were inconsistent. Inconsistent verdicts, however, did not require reversal. The jury's verdict finding the appellant guilty of violating the Ethics Act was supported by the evidence presented at trial. The court of appeals would not speculate as to the reasons why the jury found the appellant not guilty of theft. The charge related to the same act and was a matter within the purview and judgment of the jury. *Hill v. State*, 651 So.2d 1128 (Ala.Crim.App.1994), rehearing denied, certiorari denied.

9. Particular circumstances

Governor's violation of Alabama's Ethics Act was not complete, for limitations purposes, when he became sole signatory on inaugural fund account he was accused of misusing, but rather when withdrawal was made from the account and funds spent to obtain direct personal financial gain. *Hunt v. Tucker*, 1996, 93 F.3d 735. Criminal Law ⇌ 149

The probable cause found by the ethics commission was not that the Governor may have violated the ethics law by accepting offerings for preaching in his church; it was that he may have violated the ethics law by using state aircraft to get to the church services where offerings were accepted. This would not amount to a restriction on his exercise of religious freedom, but on his use of state aircraft. *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala. 1992), affirmed 976 F.2d 744.

Where the Governor solicited funds for his transition into office and inauguration through a tax exempt non-profit corporation, and thereafter used part of those funds to make a payment on a note and mortgage on his farm, this payment clearly resulted in direct personal financial gain to the Governor. *Ex parte Hunt*, 642 So.2d 1060 (Ala.1994), rehearing denied, habeas corpus denied 875 F.Supp. 1487, affirmed 93 F.3d 735.

Using excess campaign funds for direct personal financial gain is a violation of the Ethics

Law. Ex parte Hunt, 642 So.2d 1060 (Ala. 1994), rehearing denied, habeas corpus denied 875 F.Supp. 1487, affirmed 93 F.3d 735.

Cited in Allen v. State, 380 So.2d 313 (Ala. Crim.App.1979); State ex rel. Graddick v. Rampey, 407 So.2d 823 (Ala.1981); Brown v. Moore, 583 F.Supp. 391 (S.D.Ala.1984); Peevy

v. State, 460 So.2d 248 (Ala.Crim.App.1984); Opinion of Justices, 474 So.2d 700 (Ala.1985); Mayes v. State, 475 So.2d 906 (Ala.Crim.App. 1985); Martin v. Reed, 480 So.2d 1180 (Ala. 1985); Britain v. State, 518 So.2d 198 (Ala. Crim.App.1987); Hunt v. Anderson, 794 F.Supp. 1551 (M.D.Ala.1991); Hunt v. Anderson, 794 F.Supp. 1557 (M.D.Ala.1992).

§ 36-25-5.1. Limitation on actions of lobbyists, subordinates of lobbyists, and principals.

(a) No lobbyist, subordinate of a lobbyist, or principal shall offer or provide a thing of value to a public employee or public official or to a family member of the public employee or family member of the public official; and no public employee or public official or family member of the public employee or family member of the public official shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal. Notwithstanding the foregoing, a lobbyist, or principal may offer or provide and a public official, public employee, or candidate may solicit or receive items of de minimis value.

(b) A lobbyist does not provide a thing of value, for purposes of this section, merely by arranging, facilitating, or coordinating with his or her principal that is providing and paying for those items. (Act 2010-764, 1st Sp. Sess., p. 29, § 3.)

HISTORY

Effective date:

The act which added this section is effective March 20, 2011.

Code Commissioner's Notes

Act 2010-764 designated this section as Section 36-25-5.5. In order to preserve space for future code sections and to conform with code numbering style, the Code Commissioner re-designated the section as Section 36-25-5.1.

LIBRARY REFERENCES

American Digest System:

Lobbying ⇨3.

Officers and Public Employees ⇨110.

Corpus Juris Secundum:

C.J.S. Elections § 558.

C.J.S. Municipal Corporations § 2024.

C.J.S. Officers and Public Employees §§ 334 to 339, 341 to 349.

C.J.S. Public Utilities § 88.

§ 36-25-5.2. Public disclosure of information regarding officials, candidates, or spouses employed by or contracting with the state or federal government.

(a) For purposes of this section, the term state shall include the State of Alabama and any of its agencies, departments, political subdivisions, counties, colleges and universities and technical schools, the Legislature, the appellate courts, district courts, circuit courts and municipal courts, municipal corporations, and city and county school systems.

(b) Each public official and the spouse of each public official, as well as each candidate and the spouse of each candidate, who is employed by the state or the federal government or who has a contract with the state or the federal

government, or who works for a company that receives 50% or more of its revenue from the state, shall notify the commission of such employment or contract within 30 days of beginning employment or within 30 days of the beginning of the contract. Additionally, each public official and the spouse of each public official, as well as each candidate and the spouse of each candidate, who is employed by the state or the federal government or who has a contract with the state or the federal government on August 14, 2011, shall notify the commission of such employment or contract by September 13, 2011. Notification shall be in the form of a filing as described in subsection (c).

(c) The filing with the commission shall include all of the following:

(1) The name of the public official or, when applicable, the name of the candidate.

(2) The name of the spouse of the public official or, when applicable, the name of the spouse of the candidate.

(3) The department or agency or county or municipality with whom the public official, candidate, or spouse is employed or with whom the public official, candidate, or spouse has a contract.

(4) The exact job description or, if applicable, a description of the contract.

(5) The beginning and ending dates of employment or, if applicable, the beginning and ending dates of the contract.

(6) The compensation, including any and all salary, allowances, and fees, received by the public official or his or her spouse or the candidate or his or her spouse.

(d) If the terms of employment or of the contract change, the public official or his or her spouse or the candidate or his or her spouse shall promptly provide updated information concerning the change with the commission, which shall revise such information in its files.

(e) Filings collected by the commission pursuant to this section are public record and shall be made available on the commission's website. (Act 2011-674, p. 1800, § 1.)

HISTORY

Effective date:

The act which added this section is effective August 14, 2011.

Code Commissioner's Notes

Act 2011-674 designated this section as Section 36-25-5.1. Because that section had al-

ready been assigned, the Code Commissioner redesignated the section as Section 36-25-5.2.

LIBRARY REFERENCES

American Digest System:

Officers and Public Employees ¶28, 110.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 36, 334 to 339, 341 to 349.

§ 36-25-6. Use of contributions.

Contributions to an office holder, a candidate, or to a public official's inaugural or transitional fund shall not be converted to personal use. (Acts 1973, No. 1056, p. 1699, § 4; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Acts 1997, No. 97-651, p. 1217, § 1.)

HISTORY**Amendment notes:**

The 1995 amendment, effective October 1, 1995, rewrote this section.

The 1997 amendment, effective October 1, 1997, deleted subsections (a)-(c); and redesignated subsection (d) as the present undesignated subsection.

CROSS REFERENCES

As to recusal of a justice or judge for campaign contributions, see Chapter 24 (commencing with § 12-24-3) of Title 12.

LIBRARY REFERENCES**American Digest System:**

Officers and Public Employees ⇐121.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 445 to 452.

CASENOTES**Remuneration for past services 1****1. Remuneration for past services**

Whether defendant, state insurance commissioner, who resigned as president of insurance company after accepting post as commissioner, and accepted payment from company, was divesting himself of ownership in company or was departing as company's president, lump-sum payment for that ownership interest or as severance pay was permissible under Ethics Act; defendant started company, built its reputation and goodwill, and established contacts on which company was built, and state presented no evidence that defendant was not entitled to some remuneration for past services. *Dill v. State*, 723 So.2d 787 (Ala.Crim. App.1998), rehearing denied. States ⇐ 73

Cited in Opinion of Justices, 403 So.2d 197 (Ala.1981); *Brown v. Moore*, 583 F.Supp. 391 (S.D.Ala.1984).

§ 36-25-7. Offering, soliciting, or receiving anything for purpose of influencing official action; money solicited or received in addition to that received in official capacity.

(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 or received is a thing of value.

(b) No public official or public employee shall solicit or receive anything for himself or herself or for a family member of the public employee or family member of the public official for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

(c) No person shall offer or give a family member of the public official or family member of the public employee anything for the purpose of corruptly influencing official action, regardless of whether or not the thing offered or given is a thing of value.

(d) No public official or public employee, shall solicit or receive any money in addition to that received by the public official or public employee in an official capacity for advice or assistance on matters concerning the Legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member. Notwithstanding the foregoing, nothing in this section shall be construed to prohibit a public official or public employee from the performance of his or her official duties or responsibilities.

(e) For purposes of this section, to act corruptly means to act voluntarily, deliberately, and dishonestly to either accomplish an unlawful end or result or

to use an unlawful method or means to accomplish an otherwise lawful end or result. (Acts 1973, No. 1056, p. 1699, § 5; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Act 2010-764, 1st Sp. Sess., p. 29, § 2; Act 2011-632, p. 1505, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, rewrote this section.

The 2010 amendment, effective March 20, 2011, in subsections (a)-(c) substituted "anything" for "a thing of value"; in subsections (a) and (b) inserted " , regardless of whether or not the thing solicited or received is a thing of value"; and in subsection (c) inserted " , regardless of whether or not the thing offered or given is a thing of value".

The 2011 amendment, effective June 9, 2011, in subsections (a)-(c) inserted "corruptly" preceding "influencing"; and added subsection (e).

LIBRARY REFERENCES

American Digest System:

Officers and Public Employees ⇨121.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 445 to 452.

RESEARCH REFERENCES

Treatises and Practice Aids

Gratuities, Offer To, Or Receipt By, Member Or Employee Of Governmental Regulatory Agency, Board Or Commission, Criminal Offenses and Defenses in Alabama § G150.

Gratuities, Offer To, Or Receipt By, Public Official Or Employee, Criminal Offenses and Defenses in Alabama § G160.

Solicitation Or Receipt Of Fees By Public Official, Public Employee, Or Member Of Household Of Public Official, Criminal Offenses and Defenses in Alabama § S170.

CASENOTES

Generally 1

Construction and application 2

Harmless error 3

1. Generally

The Alabama ethics commission has interpreted the provisions of this section and determined that a conflict of interest is a necessary element of this section. *Kirkland v. State*, 529 So.2d 1036 (Ala.Crim.App.1988).

The Legislature of Alabama intended that a conflict of interest must be established in order to prove a violation of this section. *Kirkland v. State*, 529 So.2d 1036 (Ala.Crim.App.1988).

2. Construction and application

The members of the Alabama ethics commission have interpreted this section as a prohibition against a public official or employee receiving a fee or other compensation other than his governmental salary, which might influence his judgment of matters which might come before him in his governmental position. *Kirkland v. State*, 529 So.2d 1036 (Ala.Crim.App.1988).

3. Harmless error

Any error in instructing jury, in prosecution for mail fraud and theft concerning a program receiving federal funds, that it could consider provisions of Alabama statute concerning public officials' code of ethics, for purposes of determining whether defendant had the requisite criminal intent, was harmless, given the district court's limiting instruction and the totality of the evidence. *U.S. v. Schmitz*, 2011, 634 F.3d 1247, rehearing and rehearing en banc denied 433 Fed.Appx. 899. Criminal Law ⇨ 1172.1(3)

Cited in *Underwood v. State*, 439 So.2d 125 (Ala.1983); *Brown v. Moore*, 583 F.Supp. 391 (S.D.Ala.1984).

§ 36-25-8. Use or disclosure of confidential information for private financial gain.

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. (Acts 1973, No. 1056, p. 1699, § 6; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, deleted "or" following "No public official," inserted "public" and "former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter," substituted "public official or public employee" for "state officer," substituted "a family" for "his family," inserted "member of the public employee or family member of the public official," added "or business," and made nonsubstantive changes.

LIBRARY REFERENCES

American Digest System:

Officers and Public Employees ⇨121.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 445 to 452.

RESEARCH REFERENCES

Treatises and Practice Aids

Confidential Information, Use Or Disclosure Of For Private Financial Gain, Criminal Offenses and Defenses in Alabama § C320.

CASENOTES

Generally 1

1. Generally

Disclosure by chief of budget and administration division of state Department of Revenue of department's receipt of \$12 million from family estate did not violate statute which prohibited use or disclosure of confidential information gained in the course of employment that could result in financial gain, as she did not make disclosures for financial gain. State Dept. of Revenue v. Wells, 669 So.2d 166 (Ala. Civ.App.1995), rehearing denied, certiorari denied. States ⇨ 52

§ 36-25-9. Service on regulatory boards and commissions regulating business with which person associated; members who have financial interest in matter prohibited from voting.

(a) Unless expressly provided otherwise by law, no person shall serve as a member or employee of a state, county, or municipal regulatory board or commission or other body that regulates any business with which he is associated. Nothing herein shall prohibit real estate brokers, agents, developers, appraisers, mortgage bankers, or other persons in the real estate field, or other state-licensed professionals, from serving on any planning boards or commissions, housing authorities, zoning board, board of adjustment, code enforcement board, industrial board, utilities board, state board, or commission.

(b) All county or municipal regulatory boards, authorities, or commissions currently comprised of any real estate brokers, agents, developers, appraisers, mortgage bankers, or other persons in the real estate industry may allow these individuals to continue to serve out their current term if appointed before December 31, 1991, except that at the conclusion of such term subsequent appointments shall reflect that membership of real estate brokers and agents shall not exceed more than one less of a majority of any county or municipal regulatory board or commission effective January 1, 1994.

(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.

(d) All acts, actions, and votes taken by such local boards and commissions between January 1, 1991 and December 31, 1993 are affirmed and ratified. (Acts 1973, No. 1056, p. 1699, § 7; Acts 1975, No. 130, p. 603, § 1; Acts 1992, No. 92-342, p. 719, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, in subsection (c), substituted "in any matter" for "on any matters," substituted "family member" for "immediate family," and deleted "in the outcome of said vote" following "interest"; and deleted "hereby" preceding "affirmed" in subsection (d); and made non-substantive changes.

Editor's Notes:

In Alabama State Ethics Commission, ex rel Charles Graddick v. Dr. Evelyn Pratt, etc., Civil Action No. CV-83-175-G (Circuit Court, Alabama Fifteenth Judicial Circuit) (1983), the Alabama State Ethics Commission sought a declaratory judgment against Dr. Pratt that her service on the Alabama State Board of Education was violative of this section since she was then employed as a city elementary school principal. The case was dismissed for lack of jurisdiction, and the court noted that the Ethics Commission advisory opinion that a person could not serve as a board member while employed as a principal or teacher was not enforceable. See also Gold, et al. v. Baggett, et al., Civil Action No. 76-120-N (United States District Court, Middle District of Alabama) (1976), and § 16-3-3.

LIBRARY REFERENCES

American Digest System:

Officers and Public Employees ⇨110.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 334 to 339, 341 to 349.

RESEARCH REFERENCES

Treatises and Practice Aids

Service On Regulatory Boards And Commissions Regulating Business With Which Person Associated Is Prohibited, Criminal Offenses and Defenses in Alabama § S40.

CASENOTES

Disqualification 1

Practice and procedure 2

1. Disqualification

Although four members of Planning Commission were engaged in the real estate or real estate construction business, they were not disqualified to serve as members of the commission by virtue of this section. The residents failed to challenge the qualifications of the commission members at the hearing, and there was no evidence in the record to indicate that any commission member was disqualified. Furthermore, assuming, arguendo, that the other two members in question were disqualified, the vote would then have been five-to-zero in favor of approving the plat, and their disqualification would have had no effect on the outcome of the hearing. *Kirkland v. Planning Com'n of City of Montgomery*, 636 So.2d 687 (Ala.Civ.App.1994).

2. Practice and procedure

Three-year limitations period applied to prosecution of defendant, state insurance commissioner, for associating with business he regulated, and knowingly and willfully accepting money from person associated with business he regulated. *Dill v. State*, 723 So.2d 787 (Ala. Crim.App.1998), rehearing denied. Criminal Law ⇨ 147

§ 36-25-10. Representation of client or constituent before board, regulatory body, department, etc.

If a public official or public employee, or family member of the public employee or family member of the public official, or a business with which the person is associated, represents a client or constituent for a fee before any quasi-judicial board or commission, regulatory body, or executive department or agency, notice of the representation shall be given within 10 days after the first day of the appearance. Notice shall be filed with the commission in the manner prescribed by it. No member of the Legislature shall for a fee, reward, or other compensation represent any person, firm, or corporation

before the Public Service Commission or the State Board of Adjustment. (Acts 1973, No. 1056, p. 1699, § 8; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, divided the former first sentence into the present first and second sentences by deleting "to" at the end of the present first sentence and by adding "Notice shall be filed with" at the beginning of the present second sentence; in the present first sentence inserted "public" following "a public official or," substituted "family member of the public employee or family member of the public official" for "member of his family," substituted "the person is associated" for "any of them is associated," substituted "represents a client" for "shall for a fee represent a client," inserted "for a fee," substituted "regulatory body" for "governmental regulatory agency," and substituted "10 days after" for "five days after"; and in the second

sentence, deleted "state ethics" preceding "commission," and substituted "prescribed by it" for "prescribed by the commission"; and made nonsubstantive changes.

LIBRARY REFERENCES

American Digest System:

Officers and Public Employees ¶110.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 334 to 339, 341 to 349.

RESEARCH REFERENCES

Treatises and Practice Aids

Representation By Legislator For Compensation Prohibited; Disclosure Required Of Other Public Officials Undertaking Such Representation, Criminal Offenses and Defenses in Alabama § R170.

§ 36-25-11. Public officials or employees entering into contracts which are to be paid out of government funds.

Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into. (Acts 1973, No. 1056, p. 1699, § 9; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, inserted "public" preceding "employee" in the first and third sentences, and substituted "the person" for "any of them" in the first and second sentences; in the first sentence substituted "exempt pursuant to" for "exempted under," substituted "by law" for "to do so under law," and "the household of the public employee or the public official" for "his

family," and deleted "public notice and" preceding "competitive bidding"; and in the last sentence substituted "a member of the household of the public employee or the public official" for "family member," and added "within 10 days after the contract has been entered into"; and made nonsubstantive changes.

CROSS REFERENCES

As to interest by aldermen or other municipal officers or employees in contracts with municipalities, see § 11-43-12.

As to submissions for public contracts and grants, and disclosure requirements, see Article 3B (commencing with § 41-16-80) of Chapter 16 of Title 41.

LIBRARY REFERENCES

American Digest System:

Counties ⇨122(2).

Municipal Corporations ⇨231.

Public Contracts ⇨107.

States ⇨95.

Corpus Juris Secundum:

C.J.S. Counties § 233.

C.J.S. Municipal Corporations §§ 1185 to 1190.

C.J.S. Public Contracts § 4.

C.J.S. Schools and School Districts §§ 571 to 573, 583 to 584, 633, 1047.

C.J.S. States § 276.

C.J.S. Towns §§ 128 to 131.

C.J.S. United States § 146.

RESEARCH REFERENCES

Treatises and Practice Aids

Contracts Between State Agencies And Public Officials Or Employees, Criminal Offenses and Defenses in Alabama § C390.

§ 36-25-12. Offering, soliciting, etc., thing of value to or by member of regulatory body.

No person shall offer or give to a member or employee of a governmental agency, board, or commission that regulates a business with which the person is associated, and no member or employee of a regulatory body, shall solicit or accept a thing of value while the member or employee is associated with the regulatory body other than in the ordinary course of business. In addition to the foregoing, the Commissioner of the Department of Agriculture and Industries and any candidate for the office of commissioner may not accept a campaign contribution from a person associated with a business regulated by the department. (Acts 1973, No. 1056, p. 1699, § 10; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Act 2001-474, p. 635, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, in the first sentence, substituted "regulatory body" for "governmental regulatory agency, board or commission," substituted "a thing of value" for "from any such person anything of value," deleted "including a promise of future employment or a favor or service" following "of value," substituted "regulatory body other than in the ordinary course of business" for "regulatory agency, board, or commission"; and deleted the former second sentence relating to expenses associated with social entertainment afforded members and employees; and made a nonsubstantive change.

The 2001 amendment, effective August 1, 2001, added the last sentence.

CROSS REFERENCES

As to employment of municipal officers by corporations holding franchises for use of streets, see § 11-43-11.

As to members of municipal councils holding offices which have been created or the emoluments of which have been increased during the

time for which such members have been elected, see § 11-43-53.

LIBRARY REFERENCES

American Digest System:

Lobbying ⇨3.

Officers and Public Employees ⇨121.

Corpus Juris Secundum:

C.J.S. Elections § 558.

C.J.S. Municipal Corporations § 2024.

C.J.S. Officers and Public Employees §§ 445 to 452.

C.J.S. Public Utilities § 88.

RESEARCH REFERENCES

Treatises and Practice Aids

Gratuities, Offer To, Or Receipt By, Member Or Employee Of Governmental Regulatory Agency, Board Or Commission, Criminal Offenses and Defenses in Alabama § G150.

CASENOTES

Generally 1

Legislative intent 2**1. Generally**

Crucial inquiry in determining whether defendant, state insurance commissioner, violated statute prohibiting him from knowingly and willfully soliciting or accepting something of value from a person associated with a business regulated by defendant was not whether defen-

dant received something of value from company which he regulated, but whether he did so knowingly and willfully. *Dill v. State*, 723 So.2d 787 (Ala.Crim.App.1998), rehearing denied. Bribery \S 1(2)

2. Legislative intent

The Legislature did not intend to exempt payments to a prostitute as expenses associated with social entertainment. *Mayberry v. State*, 419 So.2d 262 (Ala.Crim.App.1982).

§ 36-25-13. Actions of former public officials or public employees prohibited for two years after departure.

(a) No public official shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, department, or legislative body, of which he or she is a former member for a period of two years after he or she leaves such membership. For the 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.

(b) Notwithstanding the provisions of subsection (a), no public official elected to a term of office shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer, before the board, agency, commission, department, or legislative body of which he or she is a former member for a period of two years following the term of office for which he or she was elected, irrespective of whether the member left the office prior to the expiration of the term to which he or she was elected. For the 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.

(c) 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, director, assistant director, department or division chief, purchasing or procurement agent having the authority to make purchases, or any person who participates in the negotiation or approval of contracts, grants, or awards or any person who negotiates or approves contracts, grants, or awards shall enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which the person was a member or employee for a period of two years after he or she leaves the membership or employment of such governmental agency.

(e) 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.

(f) No former public official or public employee of the state may, within two years after termination of office or employment, act as attorney for any person other than himself or herself or the state, or aid, counsel, advise, consult or assist in representing any other person, in connection with any judicial proceeding or other matter in which the state is a party or has a direct and substantial interest and in which the former public official or public employee participated personally and substantially as a public official or employee or which was within or under the public official or public employee's official responsibility as an official or employee. This prohibition shall extend to all judicial proceedings or other matters in which the state is a party or has a direct and substantial interest, whether arising during or subsequent to the public official or public employee's term of office or employment.

(g) Nothing in this chapter shall be deemed to limit the right of a public official or public employee to publicly or privately express his or her support for or to encourage others to support and contribute to any candidate, political committee as defined in Section 17-22A-2, referendum, ballot question, issue, or constitutional amendment. (Acts 1973, No. 1056, p. 1699, § 11; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Act 2014-440, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective June 19, 1996, rewrote this section.

The 2014 amendment, effective April 10, 2014, redesignated subsections (b)-(f) as subsections (e)-(g), respectively; and added subsection (b). As to application, see the Code Commissioner's Notes.

Code Commissioner's Notes

Act 2014-440, which amended this section and Sections 36-25-1 and 36-25-23, provides in § 2: "This act shall become effective imme-

diately following its passage and approval by the Governor, or its otherwise becoming law and shall apply to public officials elected or re-elected on or after that date." Act 2014-440 was signed by the Governor on April 10, 2014.

LIBRARY REFERENCES

American Digest System:

Lobbying ¶5.

RESEARCH REFERENCES

Treatises and Practice Aids

Lobbying And Contracting By Former Official Or Employee, Criminal Offenses and Defenses in Alabama § L100.

§ 36-25-14. Filing of statement of economic interests.

(a) A statement of economic interests shall be completed and filed in accordance with this chapter with the commission no later than April 30 of each year covering the period of the preceding calendar year by each of the following:

(1) All elected public officials at the state, county, or municipal level of government or their instrumentalities.

(2) Any person appointed as a public official and any person employed as a public employee at the state, county, or municipal level of government or their instrumentalities who occupies a position whose base pay is seventy-

five thousand dollars (\$75,000) or more annually, as adjusted by the commission by January 31 of each year to reflect changes in the U.S. Department of Labor's Consumer Price Index, or a successor index.

(3) All candidates, simultaneously with the date he or she becomes a candidate as defined in Section 17-22A-2, or the date the candidate files his or her qualifying papers, whichever comes first.

(4) Members of the Alabama Ethics Commission; appointed members of boards and commissions having statewide jurisdiction (but excluding members of solely advisory boards).

(5) All full-time nonmerit employees, other than those employed in maintenance, clerical, secretarial, or other similar positions.

(6) Chief clerks and chief managers.

(7) Chief county clerks and chief county managers.

(8) Chief administrators.

(9) Chief county administrators.

(10) Any public official or public employee whose primary duty is to invest public funds.

(11) Chief administrative officers of any political subdivision.

(12) Chief and assistant county building inspectors.

(13) Any county or municipal administrator with power to grant or deny land development permits.

(14) Chief municipal clerks.

(15) Chiefs of police.

(16) Fire chiefs.

(17) City and county school superintendents and school board members.

(18) City and county school principals or administrators.

(19) Purchasing or procurement agents having the authority to make any purchase.

(20) Directors and assistant directors of state agencies.

(21) Chief financial and accounting directors.

(22) Chief grant coordinators.

(23) Each employee of the Legislature or of agencies, including temporary committees and commissions established by the Legislature, other than those employed in maintenance, clerical, secretarial, or similar positions.

(24) Each employee of the Judicial Branch of government, including active supernumerary district attorneys and judges, other than those employed in maintenance, clerical, secretarial, or other similar positions.

(25) Every full-time public employee serving as a supervisor.

(b) Unless otherwise required by law, no public employee occupying a position earning less than seventy-five thousand dollars (\$75,000) per year shall be required to file a statement of economic interests, as adjusted by the

commission by January 31 of each year to reflect changes in the U.S. Department of Labor's Consumer Price Index, or a successor index. Notwithstanding the provisions of subsection (a) or any other provision of this chapter, no coach of an athletic team of any four-year institution of higher education which receives state funds shall be required to include any income, donations, gifts, or benefits, other than salary, on the statement of economic interests, if the income, donations, gifts, or benefits are a condition of the employment contract. Such statement shall be made on a form made available by the commission. The duty to file the statement of economic interests shall rest with the person covered by this chapter. Nothing in this chapter shall be construed to exclude any public employee or public official from this chapter regardless of whether they are required to file a statement of economic interests. The statement shall contain the following information on the person making the filing:

(1) Name, residential address, business; name, address, and business of living spouse and dependents; name of living adult children; name of parents and siblings; name of living parents of spouse. Undercover law enforcement officers may have their residential addresses and the names of family members removed from public scrutiny by filing an affidavit stating that publicizing this information would potentially endanger their families.

(2) A list of occupations to which one third or more of working time was given during previous reporting year by the public official, public employee, or his or her spouse.

(3) A listing of total combined household income of the public official or public employee during the most recent reporting year as to income from salaries, fees, dividends, profits, commissions, and other compensation and listing the names of each business and the income derived from such business in the following categorical amounts: less than one thousand dollars (\$1,000); at least one thousand dollars (\$1,000) and less than ten thousand dollars (\$10,000); at least ten thousand dollars (\$10,000) and less than fifty thousand dollars (\$50,000); at least fifty thousand dollars (\$50,000) and less than one hundred fifty thousand dollars (\$150,000); at least one hundred fifty thousand dollars (\$150,000) and less than two hundred fifty thousand dollars (\$250,000); or at least two hundred fifty thousand dollars (\$250,000) or more. The person reporting shall also name any business or subsidiary thereof in which he or she or his or her spouse or dependents, jointly or severally, own five percent or more of the stock or in which he or she or his or her spouse or dependents serves as an officer, director, trustee, or consultant where the service provides income of at least one thousand dollars (\$1,000) and less than five thousand dollars (\$5,000); or at least five thousand dollars (\$5,000) or more for the reporting period.

(4) If the filing public official or public employee, or his or her spouse, has engaged in a business during the last reporting year which provides legal, accounting, medical or health related, real estate, banking, insurance, educational, farming, engineering, architectural management, or other professional services or consultations, then the filing party shall report the

number of clients of such business in each of the following categories and the income in categorical amounts received during the reporting period from the combined number of clients in each category: Electric utilities, gas utilities, telephone utilities, water utilities, cable television companies, intrastate transportation companies, pipeline companies, oil or gas exploration companies, or both, oil and gas retail companies, banks, savings and loan associations, loan or finance companies, or both, manufacturing firms, mining companies, life insurance companies, casualty insurance companies, other insurance companies, retail companies, beer, wine or liquor companies or distributors, or combination thereof, trade associations, professional associations, governmental associations, associations of public employees or public officials, counties, and any other businesses or associations that the commission may deem appropriate. Amounts received from combined clients in each category shall be reported in the following categorical amounts: Less than one thousand dollars (\$1,000); more than one thousand dollars (\$1,000) and less than ten thousand dollars (\$10,000); at least ten thousand dollars (\$10,000) and less than twenty-five thousand dollars (\$25,000); at least twenty-five thousand dollars (\$25,000) and less than fifty thousand dollars (\$50,000); at least fifty thousand dollars (\$50,000) and less than one hundred thousand dollars (\$100,000); at least one hundred thousand dollars (\$100,000) and less than one hundred fifty thousand dollars (\$150,000); at least one hundred fifty thousand dollars (\$150,000) and less than two hundred fifty thousand dollars (\$250,000); or at least two hundred fifty thousand dollars (\$250,000) or more.

(5) If retainers are in existence or contracted for in any of the above categories of clients, a listing of the categories along with the anticipated income to be expected annually from each category of clients shall be shown in the following categorical amounts: Less than one thousand dollars (\$1,000); at least one thousand dollars (\$1,000) and less than five thousand dollars (\$5,000); or at least five thousand dollars (\$5,000) or more.

(6) If real estate is held for investment or revenue production by a public official, his or her spouse or dependents, then a listing thereof in the following fair market value categorical amounts: Under fifty thousand dollars (\$50,000); at least fifty thousand dollars (\$50,000) and less than one hundred thousand dollars (\$100,000); at least one hundred thousand dollars (\$100,000) and less than one hundred fifty thousand dollars (\$150,000); at least one hundred fifty thousand dollars (\$150,000) and less than two hundred fifty thousand dollars (\$250,000); at least two hundred fifty thousand dollars (\$250,000) or more. A listing of annual gross rent and lease income on real estate shall be made in the following categorical amounts: Less than ten thousand dollars (\$10,000); at least ten thousand dollars (\$10,000) and less than fifty thousand dollars (\$50,000); fifty thousand dollars (\$50,000) or more. If a public official or a business in which the person is associated received rent or lease income from any governmental agency in Alabama, specific details of the lease or rent agreement shall be filed with the commission.

(7) A listing of indebtedness to businesses operating in Alabama showing types and number of each as follows: Banks, savings and loan associations, insurance companies, mortgage firms, stockbrokers and brokerages or bond firms; and the indebtedness to combined organizations in the following categorical amounts: Less than twenty-five thousand dollars (\$25,000); twenty-five thousand dollars (\$25,000) and less than fifty thousand dollars (\$50,000); fifty thousand dollars (\$50,000) and less than one hundred thousand dollars (\$100,000); one hundred thousand dollars (\$100,000) and less than one hundred fifty thousand dollars (\$150,000); one hundred fifty thousand dollars (\$150,000) and less than two hundred fifty thousand dollars (\$250,000); two hundred fifty thousand dollars (\$250,000) or more. The commission may add additional business to this listing. Indebtedness associated with the homestead of the person filing is exempted from this disclosure requirement.

(c) Filing required by this section shall reflect information and facts in existence at the end of the reporting year.

(d) If the information required herein is not filed as required, the commission shall notify the public official or public employee concerned as to his or her failure to so file and the public official or public employee shall have 10 days to file the report after receipt of the notification. The commission may, in its discretion, assess a fine of ten dollars (\$10) a day, not to exceed one thousand dollars (\$1,000), for failure to file timely.

(e) A person who intentionally violates any financial disclosure filing requirement of this chapter shall be subject to administrative fines imposed by the commission, or shall, upon conviction, be guilty of a Class A misdemeanor, or both.

Any person who unintentionally neglects to include any information relating to the financial disclosure filing requirements of this chapter shall have 90 days to file an amended statement of economic interests without penalty. (Acts 1973, No. 1056, p. 1699, § 12; Acts 1975, No. 130, p. 603, § 1; Acts 1986, No. 86-321, p. 475, § 1; Acts 1995, No. 95-194, p. 269, § 1; Acts 1997, No. 97-651, p. 1217, § 1; Act 2012-509, p. 1507, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, rewrote this section.

The 1997 amendment, effective October 1, 1997, in subsection (a), in subdivision (3) substituted "in Section 17-22A-2" for "herein".

The 2012 amendment, effective August 1, 2012, in subsections (a) and (b) substituted "seventy-five thousand dollars (\$75,000)" for "fifty thousand dollars (\$50,000)", and inserted ", as adjusted by the commission by January 31 of each year to reflect changes in the U.S. Department of Labor's Consumer Price Index, or a successor index"; and in subsection

(b), in subdivision (5) substituted "less" for "Less".

Code Commissioner's Notes

In 1995, the Code Commissioner inserted "than" for "then" in subdivision (3) of subsection (b) to correct a typographical error.

CROSS REFERENCES

As to submissions for public contracts and grants, and disclosure requirements, see Article 3B (commencing with § 41-16-80) of Chapter 16 of Title 41.

LIBRARY REFERENCES

American Digest System:

Officers and Public Employees ¶28, 110.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 36, 334 to 339, 341 to 349.

RESEARCH REFERENCES**Treatises and Practice Aids**

Interests Of Public Officials And Employees; Disclosure Required, Criminal Offenses and Defenses in Alabama § 1150.

CASENOTES**Generally 1****Constitutionality 2****Particular circumstances 4****Purpose 3****1. Generally**

Legislature has the authority to require as a condition of employment that those public employees who occupy a position of public trust must disclose their financial status. *Gideon v. Alabama State Ethics Commission*, 379 So.2d 570 (Ala.1980). Officers And Public Employees ⇐ 110

2. Constitutionality

Code of Ethics for Public Officials is not violative of § 173 of the Constitution, governing the impeachment and removal of certain public officials for the commission of designated crimes, in light of § 176 of the Constitution. *Allen v. State*, 382 So.2d 11 (Ala.Crim.App. 1979), writ denied 382 So.2d 25, certiorari denied 101 S.Ct. 125, 449 U.S. 843, 66 L.Ed.2d 52. Officers And Public Employees ⇐ 61

In light of the legitimate state interests fostered, the disclosures required do not violate the United States Constitution by impinging on the employees' financial privacy. *Gideon v. Alabama State Ethics Commission*, 379 So.2d 570 (Ala.1980).

3. Purpose

This section's application to spouses and dependents is rationally related to the proper legislative purposes of preventing and detecting corruption among public employees and fostering the public's confidence in its government. *Gideon v. Alabama State Ethics Commission*, 379 So.2d 570 (Ala.1980).

Not only is disclosure by an employee of his or her spouse's financial interests reasonable, but it is necessary, as absent such a provision the purposes of the chapter could be thwarted by a public officer or employee concealing his economic interests by placing them in his spouse's name. *Gideon v. Alabama State Ethics Commission*, 379 So.2d 570 (Ala.1980).

4. Particular circumstances

State of Alabama was not required to submit statement-of-economic-interests form, required for qualification of candidates, for preclearance under the Voting Rights Act, where the statutes mandating that candidates for public office file a statement of economic interests and prescribing the contents of the form had been precleared and there were no substantive differences between the actual contents of the form and the contents prescribed by statute, as applied to candidates disqualified for failure to timely file the form. *Ritter v. Bennett*, 23 F.Supp.2d 1334 (M.D.Ala.1998). Election Law ⇐ 622

Directors of county economic and industrial development authority were not required to file statements of economic interests, where directors did not receive salaries. *Dobbs v. Shelby County Economic and Industrial Development Authority*, 749 So.2d 425 (Ala.1999). Counties ⇐ 92

Cited in Muncaster v. Alabama State Ethics Comm'n, 372 So.2d 853 (Ala.1979).

§ 36-25-15. Candidates required to file statements of economic interests; official to notify commission of name of candidate; failure to submit statement.

(a) Candidates at every level of government shall file a completed statement of economic interests for the previous calendar year with the appropriate election official simultaneously with the date he or she becomes a candidate as defined in Section 17-22A-2 or the date such candidate files his or her qualifying papers with the appropriate election official, whichever date occurs first. Such election official shall within five days forward the statement of economic interests of the candidate to the commission. Nothing in this section shall be deemed to require a second filing of the person's statement of economic interests if a current statement of economic interests is on file with the commission.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 36, 334 to 339, 341 to 349.

RESEARCH REFERENCES**Treatises and Practice Aids**

Interests Of Public Officials And Employees; Disclosure Required, Criminal Offenses and Defenses in Alabama § 1150.

CASENOTES**Generally 1****Constitutionality 2****Particular circumstances 4****Purpose 3****1. Generally**

Legislature has the authority to require as a condition of employment that those public employees who occupy a position of public trust must disclose their financial status. *Gideon v. Alabama State Ethics Commission*, 379 So.2d 570 (Ala.1980). Officers And Public Employees ⇨ 110

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Code of Ethics for Public Officials is not violative of § 173 of the Constitution, governing the impeachment and removal of certain public officials for the commission of designated crimes, in light of § 176 of the Constitution. *Allen v. State*, 382 So.2d 11 (Ala.Crim.App. 1979), writ denied 382 So.2d 25, certiorari denied 101 S.Ct. 125, 449 U.S. 843, 66 L.Ed.2d 52. Officers And Public Employees ⇨ 61

In light of the legitimate state interests fostered, the disclosures required do not violate the United States Constitution by impinging on the employees' financial privacy. *Gideon v. Alabama State Ethics Commission*, 379 So.2d 570 (Ala.1980).

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This section's application to spouses and dependents is rationally related to the proper legislative purposes of preventing and detecting corruption among public employees and fostering the public's confidence in its government. *Gideon v. Alabama State Ethics Commission*, 379 So.2d 570 (Ala.1980).

Not only is disclosure by an employee of his or her spouse's financial interests reasonable, but it is necessary, as absent such a provision the purposes of the chapter could be thwarted by a public officer or employee concealing his economic interests by placing them in his spouse's name. *Gideon v. Alabama State Ethics Commission*, 379 So.2d 570 (Ala.1980).

4. Particular circumstances

State of Alabama was not required to submit statement-of-economic-interests form, required for qualification of candidates, for preclearance under the Voting Rights Act, where the statutes mandating that candidates for public office file a statement of economic interests and prescribing the contents of the form had been precleared and there were no substantive differences between the actual contents of the form and the contents prescribed by statute, as applied to candidates disqualified for failure to timely file the form. *Ritter v. Bennett*, 23 F.Supp.2d 1334 (M.D.Ala.1998). Election Law ⇨ 622

Directors of county economic and industrial development authority were not required to file statements of economic interests, where directors did not receive salaries. *Dobbs v. Shelby County Economic and Industrial Development Authority*, 749 So.2d 425 (Ala.1999). Counties ⇨ 92

Cited in *Muncaster v. Alabama State Ethics Comm'n*, 372 So.2d 853 (Ala.1979).

§ 36-25-15. Candidates required to file statements of economic interests; official to notify commission of name of candidate; failure to submit statement.

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(b) Each election official who receives a declaration of candidacy or petition to appear on the ballot for election from a candidate and each official who nominates a person to serve as a public official shall, within five days of the receipt or nomination, notify the commission of the name of the candidate, as defined in this chapter, and the date on which the person became a candidate or was nominated as a public official.

(c) Other provisions of the law notwithstanding, if a candidate does not submit a statement of economic interests in accordance with the requirements of this chapter, the name of the person shall not appear on the ballot and the candidate shall be deemed not qualified as a candidate in that election. Notwithstanding the foregoing, the commission may, for good cause shown, allow the candidate an additional five days to file such statement of economic interests. If a candidate is deemed not qualified, the appropriate election official shall remove the name of the candidate from the ballot. (Acts 1973, No. 1056, p. 1699, § 13; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Acts 1997, No. 97-651, p. 1217, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, rewrote this section.

The 1997 amendment, effective October 1, 1997, in subsection (a) substituted "in Section 17-22A-2" for "herein".

LIBRARY REFERENCES

American Digest System:

Election Law ⇨242.

Officers and Public Employees ⇨28.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees § 36.

CASENOTES

Generally 1

Consequences of failure to file 4

Relation to other laws 2

Statement of economic interests 3

1. Generally

Winning the nomination is not a prerequisite to becoming a "candidate" for state or elective public office. *Muncaster v. Alabama State Ethics Commission*, 372 So.2d 853 (Ala.1979).

2. Relation to other laws

Filing of a declaration of candidacy under § 17-16-11 triggers the necessity for compliance with the Alabama Ethics Law and in particular with the provisions of this section. *Muncaster v. Alabama State Ethics Commission*, 372 So.2d 853 (Ala.1979).

3. Statement of economic interests

Statement-of-economic-interests form did not contain changes from precleared statute that should themselves have been precleared under the Voting Rights Act, where the changes were not in the form itself, but in the instructions that attended the form, and did not concern how the form should be completed, in disqualifying candidates, the State applied the provisions of the precleared statute and not the misleading information on the form, and there was no evidence that the State rejected any candidates based on their decision to file the form with the Ethics Commission as instructed rather than the Secretary of State's office as provided by statute. *Ritter v. Bennett*, 23 F.Supp.2d 1334 (M.D.Ala.1998). Election Law ⇨ 622

A candidate for a county or municipal office was not required to file a statement of economic interests. *Watson v. Figures*, 631 So.2d 936 (Ala.1994).

4. Consequences of failure to file

Under jurisdiction-stripping statute, which severely restricted a court's jurisdiction to hear actions challenging the conduct of elections, trial court lacked subject matter jurisdiction to rule on petition for a writ of prohibition brought by Republican party elector and Republican candidate for Associate Justice of the State Supreme Court, which petition sought to impact the conduct of Republican primary election by having the court either remove the name of one of the candidates from the ballot or have the Republican party not canvass votes cast for that candidate due to candidate's alleged failure to comply with Ethics Act; Ethics Act provision that required candidate to sub-

mit a statement of economic interests in order to appear on ballot did not meet requirement in jurisdiction-stripping statute that a court's authority to entertain a proceeding for ascer-

taining the legality of an election had to be specially and specifically enumerated and set down by statute. *Rice v. Chapman*, 51 So.3d 281 (Ala.2010). Prohibition 16

§ 36-25-16. Reports by persons who are related to public officials or public employees and who represent persons before regulatory body or contract with state.

(a) When any citizen of the state or business with which he or she is associated represents for a fee any person before a regulatory body of the Executive Branch, he or she shall report to the commission the name of any adult child, parent, spouse, brother, or sister who is a public official or a public employee of that regulatory body of the Executive Branch.

(b) When any citizen of the state or business with which the person is associated enters into a contract for the sale of goods or services to the State of Alabama or any of its agencies or any county or municipality and any of their respective agencies in amounts exceeding seven thousand five hundred dollars (\$7,500), he or she shall report to the commission the names of any adult child, parent, spouse, brother, or sister who is a public official or public employee of the agency or department with whom the contract is made.

(c) This section shall not apply to any contract for the sale of goods or services awarded through a process of public notice and competitive bidding.

(d) Each regulatory body of the Executive Branch, or any agency of the State of Alabama shall be responsible for notifying citizens affected by this chapter of the requirements of this section. (Acts 1973, No. 1056, p. 1699, § 15; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, in subsection (a) substituted "regulatory body" for "state regulatory agency or commission or department" in two places, deleted "state ethics" following "report to the," substituted "a public official" for "an official" and substituted "a public employee" for "an em-

ployee"; in subsection (b) inserted "or any county or municipality and any of their respective agencies," substituted "seven thousand five hundred dollars (\$7,500)" for "\$1,000.00," and substituted "a public official or public employee" for "an official or employee"; in subsection (d), substituted "regulatory body" for "regulatory agency, commission or department" and substituted "of this section" for "of this provision"; and made nonsubstantive changes.

§ 36-25-17. Reports of violations; cooperation of agency heads.

(a) Every governmental agency head shall within 10 days file reports with the commission on any matters that come to his or her attention in his or her official capacity which constitute a violation of this chapter.

(b) Governmental agency heads shall cooperate in every possible manner in connection with any investigation or hearing, public or private, which may be conducted by the commission. (Acts 1973, No. 1056, p. 1699, § 16; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, in subsection (a) inserted "within 10 days" and inserted "in his or her official capac-

ity," and substituted "constitute a violation" for "may constitute a violation," deleted former subsection (c) relating to the preparation and publication of procedures for review and appeal; and made nonsubstantive changes.

§ 36-25-18. Registration of lobbyists required; filing of supplemental registration.

(a) Every lobbyist shall register by filing a form prescribed by the commission no later than January 31 of each year or within 10 days after the first undertaking requiring such registration. Each lobbyist, except public employees who are lobbyists, shall pay an annual fee of one hundred dollars (\$100) on or before January 31 of each year or within 10 days of the first undertaking requiring such registration.

(b) The registration shall be in writing and shall contain the following information:

- (1) The registrant's full name and business address.
- (2) The registrant's normal business and address.
- (3) The full name and address of the registrant's principal or principals.
- (4) The listing of the categories of subject matters on which the registrant is to communicate directly with a member of the legislative body to influence legislation or legislative action.
- (5) If a registrant's activity is done on behalf of the members of a group other than a corporation, a categorical disclosure of the number of persons of the group as follows: 1-5; 6-10; 11-25; over 25.
- (6) A statement signed by each principal that he or she has read the registration, knows its contents and has authorized the registrant to be a lobbyist in his or her behalf as specified therein, and that no compensation will be paid to the registrant contingent upon passage or defeat of any legislative measure.

(c) A registrant shall file a supplemental registration indicating any substantial change or changes in the information contained in the prior registration within 10 days after the date of the change. (Acts 1973, No. 1056, p. 1699, § 19; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY

C.J.S. Licenses § 41.

Amendment notes:

The 1995 amendment, effective October 1, 1995, rewrote this section.

CASENOTES

Contingent contracts 1

LIBRARY REFERENCES

American Digest System:

Lobbying @2.

Corpus Juris Secundum:

C.J.S. International Law § 36.

1. Contingent contracts

Contingent contracts are not void as against public policy in Alabama. *Chandler v. Lamar County Bd. of Educ.*, 528 So.2d 309 (Ala.1988).

Alabama's approach to analyzing contingent contracts has been to look first at the face of the contract to determine if there is an appearance of secrecy or deception to be practiced, or if fraud or corruption has contemplated anything to justify a judicial declaration that it is against fair dealing, good morals, or public policy. *Chandler v. Lamar County Bd. of Educ.*, 528 So.2d 309 (Ala.1988).

Trial court erred in holding that contract between plaintiff and county board of education was void as being against public policy,

since the terms of the contract provided that plaintiff would "seek additional revenue from any and all sources" and no evidence was presented to indicate that plaintiff secured additional gas and oil severance tax revenues by lobbying the Alabama Legislature. His efforts were shown to be directed at obtaining for the board a more favorable division of the gas and oil severance tax money after it had been disbursed to the county pursuant to § 40-20-8(a). *Chandler v. Lamar County Bd. of Educ.*, 528 So.2d 309 (Ala.1988).

§ 36-25-19. Registered lobbyists and other persons required to file quarterly reports.

(a) Every person registered as a lobbyist pursuant to Section 36-25-18 and every principal employing any lobbyist shall file with the commission a report provided by the commission pertaining to the activities set out in that section. The report shall be filed with the commission no later than January 31, April 30, July 31, and October 31 for each preceding calendar quarter, and contain, but not be limited to, the following information:

(1) The cost of those items excluded from the definition of a thing of value which are described in Section 36-25-1(34)b. and which are expended within a 24-hour period on a public official, public employee, and members of his or her respective household in excess of two hundred fifty dollars (\$250) with the name or names of the recipient or recipients and the date of the expenditure.

(2) The nature and date of any financial transaction between the public official, candidate, or member of the household of such public official or candidate and the lobbyist or principal of a value in excess of five hundred dollars (\$500) in the prior quarter, excluding those financial transactions which are required to be reported by candidates under the Fair Campaign Practices Act as provided in Chapter 22A (commencing with Section 17-22A-1) of Title 17.

(3) A detailed statement showing the exact amount of any loan given or promised to a public official, candidate, public official or candidate.

(4) A detailed statement showing any direct business association or partnership with any public official, candidate, or members of the household of such public official or candidate; provided, however, that campaign expenditures shall not be deemed a business association or partnership.

(b) Any person not otherwise deemed a lobbyist pursuant to this chapter who negotiates or attempts to negotiate a contract, sells or attempts to sell goods or services, engages or attempts to engage in a financial transaction with a public official or public employee in their official capacity and who within a calendar day expends in excess of two hundred fifty dollars (\$250) on such public employee, public official, and his or her respective household shall file a detailed quarterly report of the expenditure with the commission.

(c) Any other provision of this chapter to the contrary notwithstanding, no organization whose officer or employee serves as a public official under this chapter shall be required to report expenditures or reimbursement paid to such officer or employee in the performance of the duties with the organization. (Acts 1973, No. 1056, p. 1699, § 20; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, rewrote this section.

Code Commissioner's Notes

In 1997, the Code Commissioner in subdivision (1) of subsection (a) inserted "Section 36-25-1(32)b." for "Section 36-25-1(30)b." to correct the citation.

In 2013, the Code Commissioner in subdivision (1) of subsection (a) inserted "Section

36-25-1(34)b" for "Section 36-25-1(32)b" to reflect the renumbering of this section by Act 2010-764 and Act 2012-433.

LIBRARY REFERENCES

American Digest System:

Lobbying ⇨6.

Corpus Juris Secundum:

C.J.S. Constitutional Law § 668.

C.J.S. Statutes § 8.

§ 36-25-20. Filing of notice of termination of lobbying activities; effect of notice as to requirement for filing of reports.

(a) A person who ceases to engage in activities requiring registration pursuant to Section 36-25-18 shall file a written, verified statement with the commission acknowledging the termination of activities. The notice shall be effective immediately.

(b) A person who files a notice of termination pursuant to this section shall file the reports required pursuant to Sections 36-25-18 and 36-25-19 for any reporting period during which he or she was registered pursuant to this chapter. (Acts 1973, No. 1056, p. 1699, § 21; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, substituted "requiring registration pursuant to" for "requiring him to register under" in the first sentence of subsection (a); substituted "pursuant to" for "under" throughout subsection (b); and made nonsubstantive changes.

LIBRARY REFERENCES

American Digest System:

Lobbying ⇨2, 6.

Corpus Juris Secundum:

C.J.S. Constitutional Law § 668.

C.J.S. International Law § 36.

C.J.S. Licenses § 41.

C.J.S. Statutes § 8.

§ 36-25-21. Reports constitute public records; reports available for public inspection.

All reports filed pursuant to Sections 36-25-18 to 36-25-20, inclusive, are public records and shall be made available for public inspection during regular business hours. (Acts 1973, No. 1056, p. 1699, § 22; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY**Amendment notes:**

The 1995 amendment, effective October 1, 1995, substituted "pursuant to Sections

36-25-18 to 36-25-20, inclusive" for "under sections 36-25-18, 36-25-19 and 36-25-20."

§ 36-25-22. Sections 36-25-18 to 36-25-21 not to be construed as affecting certain professional services.

Sections 36-25-18 to 36-25-21, inclusive, shall not be construed as affecting professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, rules, or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action. (Acts 1973, No. 1056, p. 1699, § 24; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY**Amendment notes:**

The 1995 amendment, effective October 1, 1995, substituted "Sections 36-25-18 to 36-25-21, inclusive" for "The provisions of sections 36-25-18 through 36-25-21," inserted "executive action, rules, or regulations," substituted "services are not" for "service is not," and inserted "executive, or regulatory," and made a nonsubstantive change.

LIBRARY REFERENCES**American Digest System:**

Lobbying ⇐1.

Corpus Juris Secundum:

C.J.S. Constitutional Law §§ 668, 9§ 36, 975.

C.J.S. Contracts § 284.

C.J.S. Corporations § 671.

C.J.S. Elections § 558.

C.J.S. Monopolies §§ 162 to 163.

C.J.S. Statutes § 8.

C.J.S. United States § 37.

§ 36-25-23. Lobbying activities prohibited during elected term of office; floor privileges of former members of Legislature; solicitation of lobbyists by public officials or employees; contracts to provide lobbying services contingent upon legislative action.

(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.

(b) No former member of the House of Representatives or the Senate of the State of Alabama shall be extended floor privileges of either body in a lobbying capacity.

(c) No public official, public employee, or group of public officials or public employees shall solicit any lobbyist to give any thing whether or not the thing

solicited is a thing of value to any person or entity for any purpose other than a campaign contribution.

(d) No principal or lobbyist shall accept compensation for, or enter into a contract to provide lobbying services which is contingent upon the passage or defeat of any legislative action. (Acts 1973, No. 1056, p. 1699, § 28; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Act 2014-440, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, added the subsection (a) designation, and added subsections (b) and (c).

The 2014 amendment, effective April 10, 2014, redesignated subsections (a)-(c) as subsections (b)-(d), respectively; and added subsection (a). As to application, see the Code Commissioner's Notes.

Code Commissioner's Notes

Act 2014-440, which amended this section and Sections 36-25-1 and 36-25-13, provides in § 2: "This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law

and shall apply to public officials elected or re-elected on or after that date." Act 2014-440 was signed by the Governor on April 10, 2014.

LIBRARY REFERENCES

American Digest System:

Lobbying ¶3, 4.

Officers and Public Employees ¶110.

Corpus Juris Secundum:

C.J.S. Constitutional Law §§ 668, 932.

C.J.S. Elections §§ 558, 572.

C.J.S. Municipal Corporations § 2024.

C.J.S. Officers and Public Employees §§ 334 to 339, 341 to 349.

C.J.S. Public Utilities § 88.

§ 36-25-24. Supervisor prohibited from discharging or discriminating against employee where employee reports violation.

(a) A supervisor shall not discharge, demote, transfer, or otherwise discriminate against a public employee regarding such employee's compensation, terms, conditions, or privileges of employment based on the employee's reporting a violation, or what he or she believes in good faith to be a violation, of this chapter or giving truthful statements or truthful testimony concerning an alleged ethics violation.

(b) Nothing in this chapter shall be construed in any manner to prevent or prohibit or otherwise limit a supervisor from disciplining, discharging, transferring, or otherwise affecting the terms and conditions of a public employee's employment so long as the disciplinary action does not result from or is in no other manner connected with the public employee's filing a complaint with the commission, giving truthful statements, and truthfully testifying.

(c) No public employee shall file a complaint or otherwise initiate action against a public official or other public employee without a good faith basis for believing the complaint to be true and accurate.

(d) A supervisor who is alleged to have violated this section shall be subject to civil action in the circuit courts of this state pursuant to the Alabama Rules of Civil Procedure as promulgated by the Alabama Supreme Court.

(e) A public employee who without a good faith belief in the truthfulness and accuracy of a complaint filed against a supervisor, shall be subject to a

civil action in the circuit courts in the State of Alabama pursuant to the Alabama Rules of Civil Procedure as promulgated by the Supreme Court. Additionally, a public employee who without a good faith belief in the truthfulness and accuracy of a complaint as filed against a supervisor shall be subject to appropriate and applicable personnel action.

(f) Nothing in this section shall be construed to allow a public employee to file a complaint to prevent, mitigate, lessen, or otherwise to extinguish existing or anticipated personnel action by a supervisor. A public employee who willfully files such a complaint against a supervisor shall, upon conviction, be guilty of the crime of false reporting. (Acts 1973, No. 1056, p. 1699, § 30; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, rewrote this section.

LIBRARY REFERENCES

American Digest System:

Officers and Public Employees ⇨110.

Corpus Juris Secundum:

C.J.S. Officers and Public Employees §§ 334 to 339, 341 to 349.

employee was terminated, where bureau indicated that employee was terminated due to insubordination and excessive use of telephone for personal reasons and bureau provided that it was unaware that employee gave information regarding board members' possible ethics violations. *Thompson v. Colbert County Tourism and Convention Bureau*, 782 So.2d 313 (Ala.Civ.App.2000), rehearing denied, certiorari denied 782 So.2d 323. Counties ⇨ 67.

CASENOTES

Generally 1.

1. Generally

County tourism and convention bureau did not violate whistleblower statute when bureau

§ 36-25-25. Making false accusation. Repealed by Acts 1995, No. 95-194, p. 269, § 3, effective October 1, 1995.

§ 36-25-26. False reporting for purpose of influencing legislation.

No person, for the purpose of influencing legislation, may do either of the following:

(1) Knowingly or willfully make any false statement or misrepresentation of the facts to a member of the Legislative or Executive Branch.

(2) Knowing a document to contain a false statement, cause a copy of the document to be received by a member of the Legislative or Executive Branch without notifying the member in writing of the truth. (Acts 1973, No. 1056, p. 1699, § 23; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, added "do either of the following" in the

introductory language, and made nonsubstantive changes.

LIBRARY REFERENCES

American Digest System:

Fraud ⇨68.10.

Corpus Juris Secundum:

C.J.S. Fraud §§ 125 to 132.

§ 36-25-27. Penalties; enforcement; jurisdiction, venue, judicial review; limitations period.

(a)(1) Except as otherwise provided, any person subject to this chapter who intentionally violates any provision of this chapter other than those for which a separate penalty is provided for in this section shall, upon conviction, be guilty of a Class B felony.

(2) Any person subject to this chapter who violates any provision of this chapter other than those for which a separate penalty is provided for in this section shall, upon conviction, be guilty of a Class A misdemeanor.

(3) Any person subject to this chapter who knowingly violates any disclosure requirement of this chapter shall, upon conviction, be guilty of a Class A misdemeanor.

(4) Any person who knowingly makes or transmits a false report or complaint pursuant to this chapter shall, upon conviction, be guilty of a Class A misdemeanor and shall be liable for the actual legal expenses incurred by the respondent against whom the false report or complaint was filed.

(5) Any person who makes false statements to an employee of the commission or to the commission itself pursuant to this chapter without reason to believe the accuracy of the statements shall, upon conviction, be guilty of a Class A misdemeanor.

(6) Any person subject to this chapter who intentionally violates this chapter relating to secrecy shall, upon conviction, be guilty of a Class C felony.

(7) Any person subject to this chapter who intentionally fails to disclose information required by this chapter shall, upon conviction, be guilty of a Class A misdemeanor.

(b) The commission, if petitioned or agreed to by a respondent and the Attorney General or district attorney having jurisdiction, by unanimous vote of the members present, may administratively resolve a complaint filed pursuant to this chapter for minor violations. The commission may levy an administrative penalty not to exceed one thousand dollars (\$1,000) for any minor violation of this chapter including, but not limited to, the failure to timely file a complete and correct statement of economic interests. The commission shall, in addition to any administrative penalty, order restitution in the amount of any economic loss to the state, county, and municipal governments and their instrumentalities and such restitution shall when collected be paid by the commission, to the entity having the economic loss. In any case in which an administrative penalty is imposed, the administrative penalty shall not be less than three times the amount of any economic loss to the state, county, and municipal governments or their instrumentalities or any economic gain or benefit to the public official or public employee, or

whichever sum is greater. The commission, through its attorney, shall institute proceedings to recover any penalties or restitution or other such funds so ordered pursuant to this section which are not paid by, or on behalf of the public official or public employee or other person who has violated this chapter. Nothing in this section shall be deemed in any manner to prohibit the commission and the respondent from entering into a consent decree settling a complaint which has previously been designated by the commission for administrative resolution, so long as the consent decree is approved by the commission. If the commission, the respondent, and the Attorney General or district attorney having jurisdiction, all concur that a complaint is deemed to be handled administratively, the action shall preclude any criminal prosecution pursuant to this chapter at the state, county, or municipal level.

(c) 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. In the event the commission, by majority vote, finds that any provision of this chapter has been violated, the alleged violation and any investigation conducted by the commission shall be referred to the district attorney of the appropriate jurisdiction or the Attorney General. The commission shall provide any and all appropriate assistance to such district attorney or Attorney General. Upon the request of such district attorney or the Attorney General, the commission may institute, prosecute, or take such other appropriate legal action regarding such violations, proceeding therein with all rights, privileges, and powers conferred by law upon assistant attorneys general.

(d) Nothing in this chapter limits the power of the state to punish any person for any conduct which otherwise constitutes a crime by statute or at common law.

(e) The penalties prescribed in this chapter do not in any manner limit the power of a legislative body to discipline its own members or to impeach public officials and do not limit the powers of agencies, departments, boards, or commissions to discipline their respective officials, members, or employees.

(f) Each circuit court of this state shall have jurisdiction of all cases and actions relative to judicial review, violations, or the enforcement of this chapter, and the venue of any action pursuant to this chapter shall be in the county in which the alleged violation occurred, or in those cases where the violation or violations occurred outside the State of Alabama, in Montgomery County. In the case of judicial review of any administrative decision of the commission, the commission's order, rule, or decision shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the commission as to the weight of the evidence on questions of fact except where otherwise authorized by law.

(g) Any felony prosecution brought pursuant to this chapter shall be commenced within four years after the commission of the offense.

(h) Any misdemeanor prosecution brought pursuant to this chapter shall be commenced within two years after the commission of the offense.

(i) Nothing in this chapter is intended to nor is to be construed as repealing in any way the provisions of any of the criminal laws of this state. (Acts 1973, No. 1056, p. 1699, § 26; Acts 1975, No. 130, p. 603, § 1; Acts 1986, No. 86-321, p. 475, § 1; Acts 1995, No. 95-194, p. 269, § 1; Acts 1996, No. 96-261, p. 307, § 1; Act 2010-763, 1st Sp. Sess., p. 17, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, rewrote this section.

The 2010 amendment, effective January 1, 2011, in subsection (a), in subdivision (6) substituted "Class C felony" for "Class A misdemeanor".

Code Commissioner's Notes

In 1995, the Code Commissioner inserted "provided" for "provide" in subsection (c) to correct a typographical error.

LIBRARY REFERENCES

American Digest System:

Lobbying ⇨9.

Officers and Public Employees ⇨121, 122.

Corpus Juris Secundum:

C.J.S. Corporations § 671.

C.J.S. Elections § 558.

C.J.S. Extortion § 13.

C.J.S. Monopolies §§ 162 to 163.

C.J.S. Officers and Public Employees §§ 445 to 456.

C.J.S. Statutes § 8.

RESEARCH REFERENCES

Treatises and Practice Aids

Confidential Information, Use Or Disclosure Of For Private Financial Gain, Criminal Offenses and Defenses in Alabama § C320.

Ethics Violations, Criminal Offenses and Defenses in Alabama § E110.

CASENOTES

- Constitutionality 1
- Due process requirements 2
- Impeachment 4
- Particular circumstances 6
- Practice and procedure 5
- Prosecution for violations 3

1. Constitutionality

Penalty provisions of statute that prohibited the use of official position or office for personal

gain did not render the statute unconstitutionally vague on the basis that it allegedly did not require a culpable mental state prior to a conviction for a lesser included misdemeanor in prosecution of defendant, who was a basketball coach at a state community college and was charged on the basis that he financial aid and/or tuition credits; absence of an express statement in a statute as to the requisite mental state did not render that statute unconstitutionally vague, and indictments specifically alleged that defendant intentionally used or caused to be used his official position or office to obtain personal gain for his wife. State v. Turner, 96 So.3d 876 (Ala.Crim.App.2011), rehearing denied, certiorari denied. Constitutional Law ⇨ 1137; Education ⇨ 1134

The punishment provision of the Code of Ethics is constitutionally valid. State v. Britain, 489 So.2d 700 (Ala.Crim.App.1986).

2. Due process requirements

This court finds the Alabama Ethics Act not so vague as to violate the Due Process Clause of the Fourteenth Amendment. The Act prohibits a defined class of persons, Alabama public officials, from utilizing their positions of public trust as a means of obtaining "direct personal financial gain." Hunt v. Tucker, 875 F.Supp. 1487 (N.D.Ala.1995), affirmed 93 F.3d 735.

A district attorney or the Attorney General may prosecute a person for violating the ethics law without the commission first investigating the matter, and a prosecution may be initiated even if the commission finds no probable cause. So, a probable cause hearing with due process protection is not a prerequisite to prosecution. Hunt v. Anderson, 794 F.Supp. 1557 (M.D.Ala.1992), affirmed 976 F.2d 744. Constitutional Law ⇨ 4569; States ⇨ 72

When an investigation and hearing are conducted by the commission, under certain circumstances, the subject must be afforded due process rights in the proceeding; failure to do so would constitute a violation of that person's constitutional rights. Hunt v. Anderson, 794 F.Supp. 1557 (M.D.Ala.1992), affirmed 976 F.2d 744.

As prosecution for violations of the code of ethics for public officials and employees was to be initiated and prosecuted by the district attorney and the ethics commission had no authority to prosecute, a hearing before the commission was not a due process requirement. *Allen v. State*, 380 So.2d 313 (Ala.Crim.App. 1979), writ denied 380 So.2d 341, certiorari denied 101 S.Ct. 121, 449 U.S. 842, 66 L.Ed.2d 49.

3. Prosecution for violations

Former provisions of subsection (b) directed that prosecution for violations of this chapter was to be initiated and prosecuted by the district attorney. Although the "ethics commission" established under this chapter had the authority to investigate and to report suspected violations to the appropriate law enforcement authorities, nowhere was it mandated that the commission had any authority to prosecute. *Rampey v. State*, 415 So.2d 1184 (Ala.Crim.App.1982).

4. Impeachment

Penalty prescribed by this chapter in no way limits power of the Legislature to impeach public officials. *Allen v. State*, 380 So.2d 313 (Ala.Crim.App.1979), writ denied 380 So.2d 341, certiorari denied 101 S.Ct. 121, 449 U.S. 842, 66 L.Ed.2d 49.

5. Practice and procedure

A violation of the Ethics Act is a felony offense subject to the general three-year statutory period of limitations applicable to felonies in general. *Hunt v. Tucker*, 875 F.Supp. 1487 (N.D.Ala.1995), affirmed 93 F.3d 735. *Criminal Law* ¶ 147

The limitations period runs from the time the crime is committed, which is when all its essential elements are present and complete. *Hunt v. Tucker*, 875 F.Supp. 1487 (N.D.Ala. 1995), affirmed 93 F.3d 735.

Clearly, under Alabama law the indictment should have been dismissed because it failed to allege an essential element of the offense as specifically included in the statutory language of § 36-25-5 and this section, the Ethics Act. *Hunt v. Tucker*, 875 F.Supp. 1487 (N.D.Ala. 1995), affirmed 93 F.3d 735.

A violation of § 32-25-5 occurs at the moment an Alabama public official knowingly or willfully "obtains direct personal gain" from the use of his office. *Hunt v. Tucker*, 875 F.Supp. 1487 (N.D.Ala.1995), affirmed 93 F.3d 735.

6. Particular circumstances

The probable cause found by the ethics commission was not that the Governor may have violated the ethics law by accepting offerings for preaching in his church; it was that he may have violated the ethics law by using state aircraft to get to the church services where offerings were accepted. This would not amount to a restriction on his exercise of religious freedom, but on his use of state aircraft. *Hunt v. Anderson*, 794 F.Supp. 1557 (M.D.Ala. 1992), affirmed 976 F.2d 744.

Attorney general's investigation of law firm and attorney, who was former director of Ethics Committee, and convening of grand jury were illegal as fruit of poisonous tree, even though statute provided that attorney general could enforce statutes governing attorney ethics, where Ethics Commission illegally referred investigation to attorney general, and attorney general did not claim any independent knowledge of wrongdoing by attorney. *Ex parte E.J.M.*, 829 So.2d 105 (Ala.2001), rehearing denied. *Officers And Public Employees* ¶ 110

Cited in *Newberry v. State*, 493 So.2d 995 (Ala.1986); *Britain v. State*, 518 So.2d 198 (Ala.Crim.App.1987); *Chandler v. State*, 615 So.2d 100 (Ala.Crim.App.1992); *Hunt v. State*, 642 So.2d 999 (Ala.Crim.App.1993), aff'd, sub nom. *Ex parte Hunt*, 642 So.2d 1060 (Ala. 1994).

§ 36-25-28. Chapter not to deprive citizens of constitutional right to communicate with members of Legislature.

Nothing in this chapter shall be construed as to deprive any citizen, not lobbying, of the citizen's constitutional right to communicate with members of the Legislature. (Acts 1973, No. 1056, p. 1699, § 25; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, deleted "the provisions of" preceding

"this chapter," deleted "for hire" following "not lobbying," and substituted "the citizen's constitutional right" for "his constitutional right."

§ 36-25-29. Appropriations.

(a) The Legislature shall appropriate such sums as it deems necessary to implement the provisions of and administer this chapter.

(b) Notwithstanding any other provision of law to the contrary, and beginning with the fiscal year ending September 30, 2012, the annual appropriation to the State Ethics Commission in the State General Fund Appropriations Act shall not be less than one tenth of one percent of the total State General Fund amount appropriated in the State General Fund Appropriations Act unless a lower appropriation amount is expressly approved by two-thirds of the membership of the House of Representatives and two-thirds of the membership of the Senate. (Acts 1973, No. 1056, p. 1699, § 29; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Act 2011-259, p. 473, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, inserted "and administer."

The 2011 amendment, effective August 1, 2011, inserted the subsection (a) designator; and added subsection (b).

§ 36-25-30. Construction of chapter.

This chapter shall be construed in pari materia with other laws dealing with the subject of ethics. (Acts 1973, No. 1056, p. 1699, § 32; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1995, substituted "of ethics" for "matter hereof," and deleted "and repeals all laws and parts of laws in conflict herewith" following "of ethics."

spirit and intention behind that act. *Dill v. State*, 723 So.2d 787 (Ala.Crim.App.1998), rehearing denied. *Officers And Public Employees* ⇐ 110

Cited in *Hunt v. Tucker*, 875 F.Supp. 1487 (N.D.Ala.1995):

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1. Generally

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