



## EXECUTIVE ORDER NO. 714

---

### BANNING "LOANED EXECUTIVES" OR "LOANED EMPLOYEES" IN AGENCIES OF THE EXECUTIVE BRANCH

**WHEREAS** it is the declared policy of the State of Alabama that "[i]t is essential to the proper operation of democratic government that public officials be independent and impartial;" that "[g]overnmental decisions and policy should be made in the proper channels of the governmental structure;" that "[n]o public office should be used for private gain other than the remuneration provided by law;" that "[i]t is important that there be public confidence in the integrity of government;" and that "[t]he attainment of one or more of [these ends] is impaired whenever there exists a conflict of interest between the private interests of a public official or a public employee and [his or her official] duties," Ala. Code § 36-25-2;

**WHEREAS** it is also the declared policy of the State of Alabama that it is "necessary" to the integrity of the processes of state government "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... be publicly and regularly disclosed," *id.*; and

**WHEREAS** the Ethics Commission, through Advisory Opinion 2015-16, concluded that an employee who is paid from a source other than public money but who performs all of the functions of a public-sector employee presumptively cannot serve under that arrangement without violating the fundamental principles underlying the Ethics Act;

**NOW, THEREFORE**, I, Kay Ivey, Governor of the State of Alabama, by virtue of the authority vested in me by the Constitution and laws of the State of Alabama, do hereby order and adopt the following policy, effective immediately, to preclude the use of so-called "loaned executives" or "loaned employees" in agencies of the Executive Branch:

#### **Section 1. Definitions.**

As used in this Executive Order, the following terms have the following meanings:

- a. **AGENCY.** Any agency, department, office bureau, board, or commission of the Executive Branch under the Governor's authority and control.

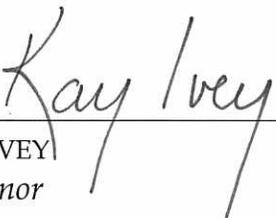
- b. NON-GOVERNMENT PERSON. An individual who is neither a public official nor a public employee as those terms are defined in section 36-25-1 of the Code of Alabama, 1975.
- c. PRIVATE ENTITY. Any non-governmental corporation, partnership, proprietorship, company, firm, foundation, enterprise, franchise, association, organization, individual, or any other legal entity, whether or not organized for profit or exempt from taxation under 26 U.S.C. § 501(c).

**Section 2. Prohibition of "Loaned Executives" or "Loaned Employees" in Agencies of the Executive Branch**

- a. Except as provided in subsection (b) below, an officer of the Executive Branch may not do either of the following:
  - i. Solicit a private entity to pay a fee, salary, or other compensation to a non-government person to perform the functions of a public official or public employee for the executive officer or his or her agency.
  - ii. Knowingly permit a non-government person to perform the functions of a public official or public employee for a fee, salary, or other compensation paid by a private entity.
- b. The prohibitions of subsection (a) do not apply with respect to the following services, provided that payment for the services by a private entity is not otherwise prohibited by law:
  - i. Services paid for by an agency pursuant to a lawfully awarded grant, contract, or employment agreement.
  - ii. Temporary services provided in connection with a natural disaster or other emergency affecting the safety of persons and property.
  - iii. Service on a board, commission, council, or committee created by legislation or executive order of the Governor.
  - iv. Isolated, infrequent legal, medical, or other professional services provided to, or on behalf of, an agency.

DONE AND ORDERED this 11<sup>th</sup> day of April, 2018.



  
KAY IVEY  
Governor

ATTESTED

  
JOHN H. MERRILL  
Secretary of State