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February 6, 2019

ADVISORY OPINION NO. 2019-02

Mr. Steve Ammons
Jefferson County Commissioner District 5
716 Richard Arrington Jr. Blvd N
Birmingham, AL 35203

Use of Office for Personal Gain/Use of Confidential Information

A member of the Jefferson County Commission can solicit business from public entities inside and outside Jefferson County, Alabama, and from Associations whose membership consist of potential Company clients, even if principals, if done under circumstances which make it clear that the business is being given to the official for reasons unrelated to his official position, he does not trade on the fact that he is a public official, he does not solicit business from a lobbyist in violation of Ala. Code § 36-25-23(c), or from anyone seeking official action from the Commission. Moreover, he may not accept anything, whether a thing of value or not, for the purpose of corruptly influencing his official actions. See Ala. Code § 36-25-7. He may not officially act on any matter in which he has a conflict of interest, which would include officially voting on an issue that would uniquely affect him, his business, or his business's clients.

Dear Mr. Ammons:

The Alabama Ethics Commission is in receipt of your request for a formal Advisory Opinion of this Commission and this opinion is issued pursuant to that request.

FACTS

Steve Ammons was sworn in as a member of the Jefferson County Commission on Wednesday, November 14, 2018. He is the owner of Business IQ ("Company"), a Birmingham-based company that has been providing employment screening services since 1997.

The Company's services currently include background checks, drug testing and other related employment screenings. While it operates nationwide, the Company's client list includes several Alabama municipalities and companies. Mr. Ammons' staff frequently solicits business from Alabama-based government entities, Associations, non-profits, and private businesses, as well – both inside and outside of Jefferson County. He is not typically involved in the day-to-day solicitation of new business, but he routinely attends events sponsored by statewide Associations as a means to network and generate leads for the Company.

Mr. Ammons understands that the Ethics Laws prohibit public officials from using their office for personal gain or for any business with which the public official is associated. He also understands that he should refrain from voting on any matters that might present a personal or professional conflict of interest. To date, he has advised the Company's employees not to reference his name or his position as a member of the Jefferson County Commission when soliciting business from potential clients.

QUESTIONS PRESENTED

1. What are the tests for determining whether I, or a representative of my company, can solicit business from local government entities located inside/outside of Jefferson County?
2. What are the tests for determining whether I, or a representative of my company, can solicit business from private business entities located inside/outside of Jefferson County?
3. What are the tests for determining whether I may attend and solicit new business opportunities at receptions, conferences, and educational functions sponsored by statewide Associations whose membership consist of potential Company clients?

ANALYSIS

Mr. Ammons is a public official. Business IQ is a business with which he is associated.¹ As a public official, he cannot use his official position to benefit himself, a family member, or any business with which he is associated. Ala. Code § 36-25-5. He is prohibited, generally,

¹ 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.

from soliciting or accepting a "thing of value" from a principal, lobbyist, or a subordinate of a lobbyist. Ala. Code § 36-25-5.1. A "thing of value" includes money. Ala. Code § 36-25-1(34). Mr. Ammons may accept compensation from a client, however, "under circumstances which make it clear that [the compensation] is provided for reasons unrelated to [his] public service as a public official...." Ala. Code § 36-25-1(34)b.10.

Questions "1" and "2" can be answered for the most part by the above Code sections and the guidance in Advisory Opinion given to Tim Gothard (AO 2017-01) in which the Commission said,

An employee of the Alabama Wildlife Federation (AWF) may not solicit donations for his employer from any of the following even if they have historically donated to AWF:

- (a) those individuals or businesses who are seeking official action by the City of Millbrook or its designated actors (such as the mayor and department heads);
- (b) those individuals or businesses who do business with the City of Millbrook;
- (c) those individuals or businesses who have interests that may be substantially affected by performance or nonperformance of the public official's official duties as a member of the Millbrook City Council based on their relationship to issues pending before the City (for example, a property owner who might benefit from re-zoning even though they are not the ones asking for it); or
- (d) those entities who qualify as an organization a majority of whose members are described in (a) through (c).

An employee of the Alabama Wildlife Federation (AWF) may not solicit a lobbyist for anything other than a campaign contribution without violating Ala. Code § 36-25-23(c). Likewise, Ala. Code § 36-25-7(a) prohibits the solicitation or receipt of anything, whether a "thing of value" or not for the purpose of corruptly influencing official action. Finally, an employee of AWF who is also a public official cannot lobby on behalf of his employer, the Wildlife Federation, contrary to 23(a)'s clear terms, before any legislative body.

Similarly, in AO 2016-31 the Commission told State Senator Clyde Chambliss that "[h]e may not use the fact that he is a State Senator in order to gain new clients (in other words, he may not trade on the office) without violating Section 5(a)." The Commission further stated that Senator Chambliss could develop clients within his traditional areas of work but that he needed to monitor conflicts of interest and avoid official action when they arise.

With respect to Associations which may be principals², in AO 2016-27 we said,

A public official or public employee may discuss, apply for, interview, negotiate, and accept a job with a principal while still employed with the State, but only if those discussions take place within the parameters articulated herein, and under circumstances which "make it clear" that the job offer is being made for reasons unrelated to the recipient's public service as a public official or public employee.

With these opinions as general guidance, Mr. Ammons can solicit business, including from businesses within Jefferson County. He may solicit business from principals, but only under facts which "make it clear" that the work provided is unrelated to his official position as a legislator. In this regard, Mr. Ammons is free to work with clients he had before he entered public life, and to the extent he retains new clients, he should avoid contracts with those who are seeking official action by Jefferson County or its designated actors (such as the Chairman, Administrator); those individuals or businesses who do business with Jefferson County; those individuals or businesses who have interests that may be substantially affected by performance or nonperformance of Mr. Ammons' official duties as a member of the Commission based on their relationship to issues pending before the City (for example, a property owner who might benefit from official action even though they are not the ones asking for it); or those entities who qualify as an organization a majority of whose members are described in (a) through (c).

Moreover, if matters come before the County Commission that would provide a unique benefit to either Mr. Ammons' business or a client of his business, (preexisting or new), then Mr. Ammons must abstain from voting on the matter including using his official position to encourage others in how they should vote. See Ala. Code § 36-25-5. He may not, however, vote or participate in any matter in which he or a member of his family has any financial gain or interest. Ala. Code § 36-25-9(c). Nothing can be solicited or accepted by Mr. Ammons for the purpose of corruptly influencing his official actions. See Ala. Code § 36-25-7. Mr. Ammons cannot solicit business from a lobbyist. See Ala. Code § 36-25-23(c). If contracts are entered into which are paid with public money, whether bid or not and including not only Mr. Ammons' business but also that of his family members, then copies of these contracts must be filed with the Commission within 10 days of being entered. See Ala. Code § 36-25-11.

We have recognized that Ala. Code § 36-25-23(a) prohibits "lobbying." See AO 2016-31. Therefore, Mr. Ammons cannot serve for a fee as a lobbyist before any legislative body or seek to influence the award of a grant or contract with a department or agency of any branch of state government. See Ala. Code §§ 36-25-1.1 and 23(a).

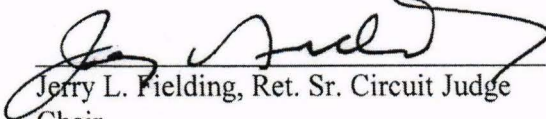
² PRINCIPAL. A person or business which employs, hires, or otherwise retains a lobbyist. A principal is not a lobbyist but is not allowed to give a thing of value.

CONCLUSION

A member of the Jefferson County Commission can solicit business from public entities inside and outside Jefferson County, Alabama, and from Associations whose membership consist of potential Company clients, even if principals, if done under circumstances which make it clear that the business is being given to the official for reasons unrelated to his official position, he does not trade on the fact that he is a public official, he does not solicit business from a lobbyist in violation of Ala. Code § 36-25-23(c), or from anyone seeking official action from the Commission. Moreover, he may not accept anything, whether a thing of value or not, for the purpose of corruptly influencing his official actions. See Ala. Code § 36-25-7. He may not officially act on any matter in which he has a conflict of interest, which would include officially voting on an issue that would uniquely affect him, his business, or his business's clients.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on February 6, 2019.


Jerry L. Fielding, Ret. Sr. Circuit Judge
Chair
Alabama Ethics Commission