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June 5, 2019

ADVISORY OPINION NO. 2019-08

Mr. Kent Back
Bowman and Back, Inc.
P.O. Box 978
Gadsden, AL 35902

Public Officials/Public Employees/Use of Office for Personal Gain

A member of the Gadsden City Council can contact governmental entities on behalf of his private sector employer and clients provided he not use the fact that he is a public official in order to obtain the business, that he not use or disclose confidential information gained in the course of his official position that could provide financial gain to his employer or client or anyone else, that he not solicit or accept anything for the purpose of corruptly influencing his official actions, that he not solicit business from those entities with pending matters before the Gadsden City Council, those doing business with the Gadsden City Council, or those whose

actions could be substantially affected by his official actions. He cannot represent DJJ or Bowman Back's interests before the Gadsden City Council. Finally, any contract his employer enters into to be paid in whole or in part out of state, county, or municipal funds must be filed with the Commission within 10 days of its being entered.

Dear Mr. Back:

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

Mr. Back is a city council member in Gadsden and is, as well, the President and owner of 54% of the stock in Bowman and Back, Inc. (hereinafter "Bowman Back") Bowman Back is a cost reduction firm. They represent three national firms: SLM Facility Solutions Nationwide, McMillian and Associates, and DJJ Technologies. DJJ represents over 100 carriers such as AT&T, Verizon, and Comcast. DJJ was recently selected by AT&T to represent them for governmental accounts in multiple states in the southeast, including Alabama. DJJ has requested Bowman Back to contact governmental entities in Alabama such as cities, counties, public universities and community colleges to market their services.

QUESTIONS PRESENTED

1. May Bowman Back engage in this activity for their client, DJJ?
2. May Mr. Back make contacts with governmental entities on behalf of DJJ?

ANALYSIS

As a member of the Gadsden City Council, Mr. Back is a public official. Ala. Code § 36-25-1. Bowman Back is a business with which he is associated. *Id.* The starting point for this analysis is found in Ala. Code § 36-25-2(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.** (Emphasis added).

The Commission has considered this issue in similar contexts before. In Advisory Opinion 2016-31 (Clyde Chambliss) the Commission acknowledged that elected public officials have a right to engage in private economic activity provided they do not trade on their public position in the process.

In Advisory Opinion 2017-01 for Tim Gothard, a member of the City Council of Millbrook, Alabama, the Commission restricted the groups of people he could solicit for contributions to his employer but reiterated that public officials should have the ability to earn a living in their chosen fields.

In Advisory Opinion 2019-02 (Steve Ammons), the Commission said the following to a member of the Jefferson County Commission,

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).

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.

In Advisory Opinion 2019-03 (Craig Lipscomb), within the context of an elected official seeking business from other governmental entities, the Commission again recognized that within reasonable limits an elected official should be able to pursue his chosen field.

Therefore, considering the previous Advisory Opinions and the facts presented here, Bowman and Back, Inc. may contact governmental entities on behalf of their client, DJJ, and Mr.

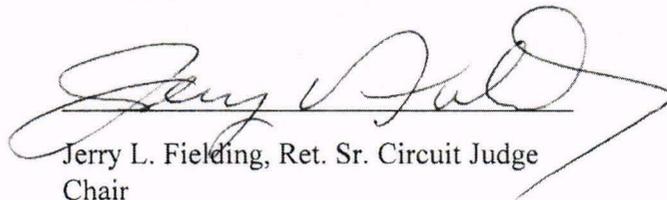
Back may make contacts with governmental entities on behalf of DJJ. Mr. Back may not use the fact that he is a member of the City Council for his, Bowman and Back Inc.'s or DJJ's benefit. He may not solicit these opportunities from anyone seeking official action from the City of Gadsden, doing business with the City of Gadsden, or anyone whose interests may be substantially affected by the performance or nonperformance of his official duties. If Bowman and Back, Inc. enters into contracts paid for in whole or in part with state, county or municipal funds then copies of these contracts must be filed with the Commission within 10 days of being entered. See Ala. Code § 36-25-11. Mr. Back cannot use or disclose confidential information gained in the course of his official position that could provide financial gain to his employer or client or anyone else. See Ala. Code § 36-25-8. He cannot represent DJJ or Bowman Back's interests before the Gadsden City Council. See Ala. Code § 36-25-13.

CONCLUSION

A member of the Gadsden City Council can contact governmental entities on behalf of his private sector employer and clients provided he not use the fact that he is a public official in order to obtain the business, that he not use or disclose confidential information gained in the course of his official position that could provide financial gain to his employer or client or anyone else, that he not solicit or accept anything for the purpose of corruptly influencing his official actions, that he not solicit business from those entities with pending matters before the Gadsden City Council, those doing business with the Gadsden City Council, or those whose actions could be substantially affected by his official actions. He cannot represent DJJ or Bowman Back's interests before the Gadsden City Council. Finally, any contract his employer enters into to be paid in whole or in part out of state, county, or municipal funds must be filed with the Commission within 10 days of its being entered.

AUTHORITY

By 3-1 vote of the Alabama Ethics Commission on June 5, 2019.


Jerry L. Fielding, Ret. Sr. Circuit Judge
Chair