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ETHICS COMMISSION



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December 4, 2019

ADVISORY OPINION NO. 2019-10

Tim McCool
Counsel for Sheriff Todd Hall
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Conflict of Interest / Sheriff contracting with
County and State Law Enforcement to
provide goods and services

An associated business of a public official
may continue to be a vendor to local public
agencies provided he does not use his public
position or influence to direct business to his
associated business and is not involved in any
transaction between his associated business
and his public agency either as a public
official or owner of the business.

A public official's associated business may
conduct business with the agency which the
public official serves provided that the
transactions are either competitively bid,
whether required or not, or there is evidence
that makes it clear the business was not
obtained because of their public position
which must be determined on a case-by-case
basis.

A copy of the contract between a business
with which a public employee or official is
associated that is paid in whole or in part
with state, county, or municipal funds must

be filed with the Ethics Commission within 10 days of executing the contract.¹ If there is no formal contract, an invoice or purchase order should be filed with the Ethics Commission to comply with Ala. Code §36-25-11.

Dear Mr. McCool:

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

FACTS

The facts as have been presented to this Commission are as follows:

For many years, Todd Hall has been engaged in business in Gordo, Pickens County, AL in the family owned business known as Gordo Tire Center. It is owned under a business entity filed as Gordo Tire Center, LLC, of which Todd Hall and his father, Gerald Hall are the members.

Gordo Tire Center buys tires from Westmoreland Tire who is a distributor for Firestone, Michelin, and Goodyear tires. Westmoreland Tire is on the list of distributors of tires that sell tires to state agencies at the state bid price as published by the Alabama Department of Finance-Purchasing Division. Gordo Tire Center purchases only Firestone, Bridgestone, and Michelin tires from Westmoreland Tire. In an agreement with Westmoreland Tire, Gordo Tire Center sells tires to local county and municipal agencies in Pickens County, including the Pickens County Sheriff's Department, at the published state bid price. Gordo Tire Center acts as Westmoreland's dealer to allow those agencies to purchase tires in or close to their home county at the state bid price. An employee of Gordo Tire Center conducts all transactions with the Pickens County Sheriff's Department as well as all other public agencies that do business with Gordo Tire Center. Sheriff Hall has no direct contact with any of those agencies on behalf of Gordo Tire Center. Gordo Tire Center is the only tire dealer in Pickens County that sells tires at the state bid price. There is a small profit made off the sale of those tires at the state bid price, but it is nominal. Those agencies pay Gordo Tire Center directly and Gordo Tire Center pays Westmoreland Tire for that transaction. Gordo Tire Center has been selling tires to the local

¹ Ala. Code §36-25-11

county and municipal agencies at state bid price for approximately five years.

Gordo Tire Center also has a towing service that includes the only heavy-duty wrecker service in Pickens County. The company is on the tow rotation list for Alabama Law Enforcement Agency (ALEA) and Pickens County 911 which includes the municipalities of Carrollton, Gordo, Reform, and Aliceville as well as the Pickens County Sheriff's Department. The company has been on those rotation lists for approximately five and six years respectively, prior to Sheriff Hall being appointed Sheriff in 2019. In order to be included in the tow rotation list for Pickens County 911, businesses are required to provide documentation to include driver's licenses for their drivers, proof of insurance, and proof that they have the appropriate secure enclosure for cars that are impounded. Each city utilizing Pickens County 911 determines whether they will choose to include a towing service that has requested to be on the rotation on their city's tow rotation list. ALEA has additional requirements that are contained in their Towing and Recovery Services Rules and Regulations to include an Application for Placement on Rotation List, Wrecker Information Sheet, and Agreement and Waiver Form. The Commander for the Tuscaloosa Post of ALEA or his/her designee reviews all paperwork submitted and inspects the equipment to be used by the towing service and when they are satisfied that all requirements have been met, the towing service is issued an Authorization Permit which allows them to be included on the ALEA tow rotation list. The towing service is subject to an annual inspection by ALEA to verify that have maintained the requirements to be an authorized towing service.

ALEA and Pickens County 911 both maintain the list of towing services in no particular order available for the area and agency requesting it. The dispatchers for ALEA and Pickens County 911 access this list when an officer calls requesting a towing service. The dispatcher for both agencies starts at the top of the list and calls the first towing service on the list unless there is a need for a particular type of wrecker, such as a heavy-duty wrecker. If that towing service is available and provide services for the geographical area, then they are dispatched for that tow. If they are not available or do not tow for that area, then the dispatcher moves to the next towing service on the list and so on. If a towing service is not available for that tow, then they are skipped, and they will not be called again until the dispatcher reaches their name on the list again. There is no discretion on the part of the dispatcher for either ALEA or Pickens County 911 which towing service is called because they are required to move to the next service on the list unless there is a need for a particular type of wrecker.

QUESTIONS PRESENTED

1. May Sheriff Todd Hall continue to do business with Pickens County and local municipalities as an owner / member of Gordo Tire Center?

2. May Gordo Tire Center continue to sell tires to Pickens County Sheriff's Department at the state bid price?
3. May Gordo Tire Center continue to tow vehicles when dispatched by Pickens County 911 including vehicles to be towed at the request of Pickens County Sheriff's Department?

ANALYSIS

Sheriff Todd Hall is a public official by virtue of his appointment by Governor Ivey.² Sheriff Hall's father is a family member as defined in Ala. Code §36-25-1(15). Gordo Tire Center, LLC is a business with which Sheriff Hall is associated because 1) he is a part owner of the business and 2) because his father, a family member, is a part owner of the business.³ The Ethics Act prohibits public officials and public employees from using their positions for personal gain for themselves, a family member or a business with which they are associated. Each business relationship set out in the facts above existed prior to Sheriff Hall becoming a public official. Therefore, the facts presented indicate that he did not use his position as Sheriff of Pickens County in violation of Ala. Code §36-25-5(a) to obtain that business because it pre-dated his appointment. Therefore, the question is whether his associated business can continue those business relationships even though he is currently a public official. The answer is yes, Gordo Tire Center may remain a vendor for the public entities as set out in the facts above provided Sheriff Todd Hall does not use his public position or his influence as a public official to direct business to Gordo Tire Center and is not involved in any transaction between the Pickens County Sheriff's Department and his business in either his public position or as a part owner of Gordo Tire Center.

Gordo Tire Center sells tires to public agencies at the state bid price and is the only tire dealer in Pickens County to do so.⁴ For purposes of this opinion, those facts make it clear the transaction is not based on Sheriff Hall's position, but due to cost and availability. Gordo Tire Center likewise sells tires to Pickens County Sheriff's Department at the state bid price. Provided Sheriff Hall continues to avoid any involvement in the transactions between Pickens County Sheriff's Department and Gordo Tire Center, his business is permitted to continue to be a vendor for tires at state bid price for Pickens County Sheriff's Department and other local agencies as described in the facts provided for this opinion.

² "PUBLIC OFFICIAL. [A]ny person appointed to a position at the state, county, or municipal level of government..." Ala. Code §36-25-1(27)

³ "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." Ala. Code §36-25-1(2)

⁴ Any questions regarding competitive bidding are outside the Ethics Act and should be directed to the Attorney General.

In previous Advisory Opinions, the Commission has prohibited a public employee or public official who is also a vendor from profiting on any business transaction with the public agency they serve unless those transactions were competitively bid, even when the competitive bid law did not require it.⁵ All contracts that are paid in whole or in part with state, county, or municipal funds must be filed with the Commission within 10 days of execution.⁶ Ala. Code §36-25-11 specifically contemplates that there will be circumstances under which a public employee or public official enters into a contract to be paid in whole or in part by state, county or municipal funds that are not competitively bid by including an exception as the first clause of the statute, "Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law..." The requirement to disclose contracts and transactions provides transparency for any public official or public employee making money in their private, associated business from government agencies. If there is no formal contract, an invoice or purchase order should be filed with the Ethics Commission to comply with Ala. Code §36-25-11.

Gordo Tire Center is selling tires to Pickens County Sheriff's Department and Gordo Tire Center is making a small profit from those sales. The sale of those tires is done through his tire distributor that is on the state bid list, but Gordo Tire Center is not specifically on the state bid list. Therefore, it is necessary to address the previous opinions that held that all transactions between a public employee or public official and their agency must be at or below cost to avoid violating Ala. Code §36-25-5(a).

We recognize, as did the previous Advisory Opinions referenced above, that an employee or official contracting with their public agency through their private business has the potential for corruption. Nonetheless, our responsibility is to determine whether, based on the facts of each circumstance, there is a violation of the Ethics Act. The mere fact that a public official or public employee's *associated business* is contracting with their public agency is not prohibited by the language of the Ethics Act.⁷ There are instances, as here, where the only viable vendor for an agency is also a business associated with a public official or public employee of that agency. It is an unreasonable burden to place on an employee or official whose associated business happens to be the sole vendor or only viable vendor in a position to either refuse to conduct business with their agency or choose to allocate their employees and resources to provide a service or good to their public agency without realizing any profit. More to the point, there is no specific prohibition for those transactions found in the Ethics Act.

What is prohibited within the Ethics Act is using one's official position in order to

⁵ See Advisory Opinions 96-97, 98-23, 2000-54, 2012-01.

⁶ See Ala. Code §36-25-11

⁷ This opinion does not address any statutes outside of the Ethics Act that speak to a public official or public employee doing business with their public agency outside of their employment or service with that agency.

acquire or create a business opportunity for personal gain or using one's official position in order to benefit an associated business or family member. In any circumstance, if it is possible to competitively bid a contract between a public employee or public official's associated business and the agency for which they serve or work, that approach is helpful because competitive bidding is designed to be done publicly and creates a transparent environment that is open and fair. All previous opinions, however, holding that no associated business of a public official or public employee could conduct business with their public agency unless competitively bid or done at or below cost are overruled insofar as they require either bidding when the bid law itself does not require bidding, or providing goods or services at or below cost. Instead, the test is whether the public employee or public official used their position or influence to obtain the opportunity and the transaction must occur under circumstances that make it clear the transaction is due to some reason other than the employee or official's public position and that must be determined on a case-by-case basis.

In that regard, the facts presented here make it clear that Sheriff Hall has not used his position in order to acquire this opportunity. All of the business relationships referenced in the facts presented were entered before he became a public official. He has not been involved in the transactions thus far and will not be involved in them moving forward. He is selling the tires at the state bid price, which is a lower price than any other dealer in the County. This opinion is specific to these facts and to Sheriff Todd Hall and his associated business. Any public official or public employee who has an associated business that wishes to conduct business with their agency outside of the competitive bid laws and above cost should seek an informal or formal opinion from this Commission.

Gordo Tire Center may remain on the towing rotation lists for ALEA and Pickens County 911 without violating Ala. Code §36-25-5(a). Sheriff Hall was not a public official at the time his company applied for and was added to the towing rotations. There is no discretion, other than when a particular type of wrecker is required, in the assignment of towing services. The dispatchers choose the next service on the list until they are able to contact one that can fulfill the towing need. The dispatchers are not employees of the Pickens County Sheriff's Department and Sheriff Hall is not their supervisor. There is no personal gain obtained by Gordo Tire Center, Sheriff Hall or his father from any government agency from those towing assignments because the owner of the vehicle is responsible for paying the towing and impound fees. There is no contract between Gordo Tire Center and any agency regarding the towing services they provide for the ALEA and Pickens County 911 dispatches, they are simply on a list of available towing services to be called.

CONCLUSION

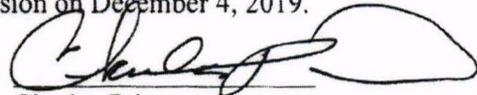
An associated business of a public official may continue to be a vendor to local public agencies provided he does not use his public position or influence to direct business to his associated business and is not involved in any transaction between his associated business and his public agency either as a public official or owner of the business.

A public official's associated business may conduct business with the agency which the public official serves provided that the transactions are either competitively bid, whether required or not, or there is evidence that makes it clear the business was not obtained because of their public position which must be determined on a case-by-case basis.

A copy of the contract between a business with which a public employee or official is associated that is paid in whole or in part with state, county, or municipal funds must be filed with the Ethics Commission within 10 days of executing the contract.⁸ If there is no formal contract, an invoice or purchase order should be filed with the Ethics Commission to comply with Ala. Code §36-25-11.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on December 4, 2019.



Charles Price
Chair
Alabama Ethics Commission

⁸ Ala. Code §36-25-11