



# STATE OF ALABAMA ETHICS COMMISSION



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August 5, 2020

## ADVISORY OPINION NO. 2020-03

J. Mark White  
White Arnold & Dowd P.C.  
On behalf of Larry Fillmer  
2025 Third Avenue North, Suite 500  
Birmingham, Alabama 35203

“Revolving Door”/Confidential  
Information/Public employee providing  
consulting services

A public employee who was formerly the Executive Director of a public agency may work as a consultant for clients he did not audit, regulate or investigate on proposals and plans they intend to submit to his former employer provided he does not represent clients before or communicate with his former employer for a period of two years; provided he does not solicit or negotiate any contracts with his former employer for a period of two years; and provided he does not disclose any confidential information obtained during his employment that could result in financial gain to any person or business.

Dear Mr. White:

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:

Mr. Larry Fillmer is the former Executive Director of the Auburn Research and Technology Foundation ("ARTF") and the former Executive Director for Auburn University's Office of External Engagement & Support ("EES"). He retired from both positions effective March 31, 2020.

ARTF supports Auburn University by growing the research enterprise through new contracts and partnerships, translating applied research into commercialized opportunities and new business ventures, and providing an entrepreneurial business environment for them to prosper. ARTF is located in the Auburn Research Park ("Research Park"), over 170 acres adjacent to the Auburn Campus. The Research Park is being developed as a mixed-use campus incorporating high technology companies, university research facilities, business support centers, technology transfer capabilities, supporting business firms, and future retail shopping and dining is planned to encourage interaction between park tenants, university faculty and students, and local entrepreneurs. As the Executive Director of ARTF and Executive Director of EES, Mr. Fillmer served as liaison between ARTF, Auburn University, and organizations, both internal and external, on matters relating to coordination, promotion, and financial support of the university's strategic research economic development initiatives, including developments at the Research Park.

After Mr. Fillmer's retirement, individuals from the private sector<sup>1</sup> ("Investors") approached him about consulting on a proposal to ARTF for the potential development of an adult living facility ("Development") at the Research Park. None of the Investors are principals or lobbyists subject to the Ethics Act. No discussions took place between Mr. Fillmer and the Investors regarding the Development prior to Mr. Fillmer's retirement. Mr. Fillmer has not yet entered into any agreement.

Mr. Fillmer and the Investors have proposed to specifically define the scope of Mr. Fillmer's work in a written agreement ("Draft Agreement"). The scope of work outlined in the Draft Agreement includes the following:

- a. provide counsel and assistance to Investors on the creation and development of an economic development proposal to ARTF;
- b. assist in the drafting, editing, or revising of an economic development proposal and/or presentation; and
- c. working with public sector agencies and entities other than Auburn University and ARTF.

Additionally, the Draft Agreement specifically prohibits Mr. Fillmer from representing the Investors or any business with which the Investors are associated before ARTF and Auburn University.<sup>2</sup>

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<sup>1</sup> Ewell Hank Elliott and Bill Perry

<sup>2</sup> "Investors recognize Consultant cannot represent Investors before Auburn University or ARTF for a period of two years beginning March 31, 2020. Consultant agrees he will not use or disclose confidential information gained in the course of or by reason of his former positions with ARTF and Auburn University." §6 Draft Agreement.



Mr. Fillmer seeks an advisory opinion from the Ethics Commission that provides guidance as to whether, considering his status as a former public employee, the Ethics Act allows him to perform the work described in the Draft Agreement.

### **QUESTION PRESENTED**

1. May a former public employee, within two years of leaving public employment, consult with private sector individuals on an economic development proposal to the board, agency, commission, or department at which the former public employee was employed? If so, what are the restrictions on such an arrangement?

### **ANALYSIS**

By virtue of his former positions with ARTF and Auburn University, Mr. Fillmer was a public employee and subject to the Ethics Act. Therefore, he is now subject to the “Revolving Door” provisions of the Ethics Act<sup>3</sup> and the restrictions contained in Ala. Code §36-25-8 regarding confidential information. Mr. Fillmer seeks to consult with Investors regarding plans and proposals they intend to submit to his previous employers. The “Revolving Door” provisions of the Ethics Act place restrictions on how former public employees and public official may interact with the public agency with which they were previously employed or served. Mr. Fillmer was a public employee; therefore, he is not permitted to represent any clients before ARTF or Auburn University for a period of two years after he separated from service<sup>4</sup> which in this case is March 31, 2020. The Draft Agreement submitted regarding the consulting services Mr. Fillmer will provide includes a clause that he “cannot represent Investors before Auburn University or ARTF for a period of two years beginning March 31, 2020.” Practically speaking, this means that Mr. Fillmer may not have any contact with either agency on behalf of his client, Investors, or any other client. All contact with those agencies must be with someone other than Mr. Fillmer. Provided Mr. Fillmer abides by that clause, there would be no violation of Ala. Code §36-25-13(c).

Further, because Mr. Fillmer was the previous Executive Director of ARTF and EES, he may not “enter into, solicit or negotiate a contract, grant, or award” with ARTF or EES for a period of two years.<sup>5</sup> If any solicitation or negotiation were to become necessary on behalf of Investors or any other private client of Mr. Fillmer’s, he would be prohibited from doing so with ARTF or Auburn University for two years beginning March 31, 2020. Based on the facts provided, Mr. Fillmer did not interact with Investors in any way prior to his retirement. Therefore, he neither directly regulated, audited or investigated these Investors while publicly employed. Finally, under the facts provided, he did not personally or substantially participate in any matter involving the Investors or this project involving the development of an adult living facility, and will not be aiding, advising, counseling or consulting on any matter that he personally participated in so Ala. Code §§36-25-13(f) & (g) are not applicable to this analysis. If the parties to the contract change,

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<sup>3</sup> Ala. Code §36-25-13

<sup>4</sup> Ala. Code §36-25-13(c)

<sup>5</sup> Ala. Code §36-25-13(d)

additional guidance must be sought because the advice may change depending on the relationship between Mr. Fillmer and any future clients.

As with any current or former public employee, Mr. Fillmer may not use or disclose any confidential information obtained by reason of his employment with ARTF or Auburn University that could result in financial gain to anyone or any business, including Investors.<sup>6</sup> This restriction is also included as a clause in the contract between Investors and Mr. Fillmer and he agrees, that "he will not use or disclose confidential information gained in the course of or by reason of his former positions with ARTF and Auburn University." Provided Mr. Fillmer abides by that requirement, there would no violation of the Ethics Act.

### **CONCLUSION**

A public employee who was formerly the Executive Director of a public agency may work as a consultant for clients he did not audit, regulate or investigate on proposals and plans they intend to submit to his former employer provided he does not represent clients before or communicate with his former employer for a period of two years; provided he does not solicit or negotiate any contracts with his former employer for a period of two years; and provided he does not disclose any confidential information obtained during his employment that could result in financial gain to any person or business.

### **AUTHORITY**

By 5-0 vote of the Alabama Ethics Commission on August 5, 2020.



Charles Price  
Chair  
Alabama Ethics Commission

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<sup>6</sup> Ala. Code §36-25-8