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May 3, 2000

ADVISORY OPINION NO. 2000-23

Dr. Victor Baugh
Former Director of Communications
City of Birmingham
2016 Lee Terrace S.W.
Birmingham, Alabama 35211

Revolving Door/Former Director Of
Communications For The City Of
Birmingham Accepting Employment With
Vendor Providing Services To The City Of
Birmingham And Representing That Vendor
Before The City Of Birmingham.

The former Director of Communications for the City of Birmingham, Alabama, may not, for a period of two years after retiring or otherwise leaving public service, accept employment with a vendor doing business with the City of Birmingham when he was personally involved in representing the City of Birmingham in dealing with that vendor, coordinated and reviewed vendor contracts, reviewed and approved vendor billings and otherwise made recommendations, either directly or indirectly, to the mayor of the City of Birmingham regarding vendors and contracts.

The former Director of Communications for the City of Birmingham, Alabama, may not act as an independent consultant for the City of Birmingham for a period of two years

after retiring or otherwise leaving public service, as he held a position of authority prior to his separation from public service.

The former Director of Communications for the City of Birmingham, Alabama, should he be allowed to accept employment with a vendor with which he had no personal involvement while employed with the City of Birmingham, may not, for a period of two years, represent clients, including his employer, before the City of Birmingham and its various departments.

Dear Dr. Baugh:

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.

QUESTION PRESENTED

May the former Director of Communications for the City of Birmingham, Alabama, conduct business with the City of Birmingham, if he is employed by a vendor doing business with the City of Birmingham?

FACTS AND ANALYSIS

Dr. Victor Baugh is the former Director of Communications for the City of Birmingham, Alabama. In September of 1988 he resigned from BellSouth to accept the position and served in that capacity until March 16, 2000.

As his position required, he represented the City of Birmingham in dealing with vendors and reviewed vendor contracts.

Dr. Baugh's job description required him to direct the financial, personnel and operational activities of the Communications Department for the City of Birmingham.

The responsibilities further required him to prepare annual operating and equipment budgets, represent the City's radio and telecommunications activities on site with vendors and

coordinate and review vendor contracts. In addition, Dr. Baugh was required to approve and review all billings.

There are three specific companies for which Dr. Baugh has expressed interest in going to work. He has been approached regarding re-employment with BellSouth. In addition, he has been approached by the Lafayette Group and Southern Communications (a subsidiary of Alabama Power Company). All of these companies are doing business with the City of Birmingham, Alabama.

In March of 1998, Dr. Baugh represented the City of Birmingham at a seminar held in Washington, D.C. The Lafayette Group was one of the entities conducting the seminar for the Department of Justice, and Dr. Baugh later recommended to the mayor's office that the Lafayette Group be contracted to identify potential sources of federal funding for the City of Birmingham.

While serving as Director of Communications for the City of Birmingham, he had been pursuing the implementation of a telephone system that would allow citizens to contact the city government for all non-emergency needs using one number—3-1-1. Based on his work with the 3-1-1 system, he was approached by the Lafayette Group to assist them as a consultant. While Dr. Baugh recommended that the Lafayette Group be contracted to identify potential sources of federal funding for the City of Birmingham, he states that the contract was independently considered and negotiated by Interim Mayor William Bell's office.

In his initial request for an opinion, Dr. Baugh set out three questions:

- 1) Can he participate on the proposed project as an employee of the Lafayette Group?
- 2) As part of his work with the Lafayette Group, what departments/duties (if any) is he prohibited from working with/providing?
- 3) If he is unable to participate as an employee of the Lafayette Group, can he work for the City of Birmingham as an independent consultant?

All three of these questions will be answered by the question previously set out in this opinion, as well as the following Code sections:

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(23) defines a public employee as:

"(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or

municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

Section 36-25-13(b) states:

"(b) No public employee shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, or department, of which he or she is a former employee for a period of two years after he or she leaves such employment. For the purposes of this subsection, such prohibition shall not include a former employee of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity."

Section 36-25-13(c) states that:

"(c) No public official, director, assistant director, department or division chief, purchasing or procurement agent having the authority to make purchases, or any person who participates in the negotiation or approval of contracts, grants, or awards or any person who negotiates or approves contracts, grants, or awards shall enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which the person was a member or employee for a period of two years after he or she leaves the membership or employment of such governmental agency."

Section 36-25-13(d) states:

"(d) No public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business, corporation, partnership, or individual shall within two years of his or her departure from such employment solicit or accept employment with such private business, corporation, partnership, or individual."

First and foremost, Dr. Baugh is prohibited from accepting employment with the three entities mentioned, based on the fact that he was involved in the contractual process between the City of Birmingham and those entities. Further, he was the City of Birmingham's representative

in dealing with these vendors, reviewed and approved their billings, and was responsible for coordinating and reviewing contracts with these vendors. Therefore, under the Ethics Law, Dr. Baugh may not, for a period of two years, go to work for any of these three entities.

As relates to other entities with which Dr. Baugh has had no dealings on behalf of the City of Birmingham (as set out above), while he would not be prohibited from accepting employment with those entities, he could not, for a period of two years, represent any of those entities before the City of Birmingham. This would include not only the City of Birmingham proper, but all of its agencies and departments. Likewise, the prohibition contained in Section 36-25-13(c) of the "Revolving Door" provisions of the Alabama Ethics Law, would prohibit Dr. Baugh from serving as an independent contractor on the project with the City of Birmingham.

Based on the facts as provided and the above law, the former Director of Communications for the City of Birmingham, Alabama, may not, for a period of two years after retiring or otherwise leaving public service, accept employment with a vendor doing business for the City of Birmingham when he was personally involved in representing the City of Birmingham in dealing with that vendor, coordinated and reviewed vendor contracts, reviewed and approved vendor billings and otherwise made recommendations, either directly or indirectly, to the mayor of the City of Birmingham regarding vendors and contracts.

Additionally, the former Director of Communications for the City of Birmingham, Alabama, may not act as an independent consultant for the City of Birmingham for a period of two years after retiring or otherwise leaving public service, as he held a position of authority prior to his separation from public service.

Further, the former Director of Communications for the City of Birmingham, Alabama, should he be allowed to accept employment with a vendor with which he had no personal involvement while employed with the City of Birmingham, may not, for a period of two years after retiring or otherwise leaving public service, represent clients, including his employer, before the City of Birmingham and its various departments.

CONCLUSION

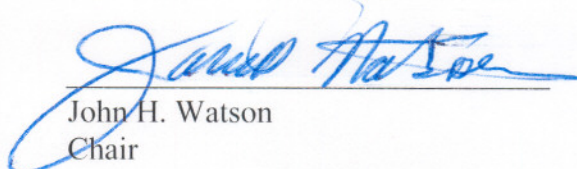
The former Director of Communications for the City of Birmingham, Alabama, may not, for a period of two years after retiring or otherwise leaving public service, accept employment with a vendor doing business with the City of Birmingham when he was personally involved in representing the City of Birmingham in dealing with that vendor, coordinated and reviewed vendor contracts, reviewed and approved vendor billings and otherwise made recommendations, either directly or indirectly, to the mayor of the City of Birmingham regarding vendors and contracts.

The former Director of Communications for the City of Birmingham, Alabama, may not act as an independent consultant for the City of Birmingham for a period of two years after retiring or otherwise leaving public service, as he held a position of authority prior to his separation from public service.

The former Director of Communications for the City of Birmingham, Alabama, should he be allowed to accept employment with a vendor with which he had no personal involvement while employed with the City of Birmingham, may not, for a period of two years after retiring or otherwise leaving public service, represent clients, including his employer, before the City of Birmingham and its various departments.

AUTHORITY

By 3-2 vote of the Alabama Ethics Commission on May 3, 2000.


John H. Watson
Chair
Alabama Ethics Commission