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June 6, 2001

ADVISORY OPINION NO. 2001-35

Thomas J. Byrne
Right of Way Specialist
Alabama Department of Transportation
Seventh Division
Office of Division Engineer
P.O. Box 647
Troy, Alabama 36081-0647

Revolving Door/Former Right Of Way Specialist With The Alabama Department Of Transportation (ALDOT) Accepting Employment With Contractor Doing Business With ALDOT.

A former Right of Way Specialist with the Alabama Department of Transportation may accept employment with Volkert & Associates, an entity contracting with ALDOT, when he has not personally participated in the direct regulation, audit, investigation, or review of Volkert's work, nor was he involved in contract negotiations between Volkert and ALDOT.

Upon accepting employment with Volkert & Associates, a former Right of Way Specialist with the Alabama Department of Transportation may not, for a period of two years after leaving public service, represent Volkert & Associates in any dealings before ALDOT.

A former Right of Way Specialist with the Alabama Department of Transportation may work on projects on behalf of Volkert with ALDOT; however, he may not use confidential information obtained in the course of his employment with ALDOT to assist Volkert in either performing the terms of the contract or in obtaining new business with ALDOT.

Dear Mr. Byrne:

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 a former Right of Way Specialist with the Alabama Department of Transportation leave the Alabama Department of Transportation and accept employment with Volkert & Associates, a business under contract with the Alabama Department of Transportation?

FACTS AND ANALYSIS

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

Thomas J. Byrne has been with the Alabama Department of Transportation since August of 1999. He was hired as a Right of Way Specialist. Mr. Byrne is also a Certified Real Property Appraiser.

Mr. Byrne has approached several consulting firms and agencies about doing appraisal work for them on a full-time basis. He states that some of these agencies do work for the State on a regular basis.

Mr. Byrne's job with ALDOT is to help the Chief Appraiser in processing the appraisals which have been reviewed for negotiation by Volkert and Earth Tech. He states that the contact he has with both of these companies is limited to appraisal review only.

Mr. Byrne states that his only dealings with Volkert & Associates have been to drop off and retrieve appraisals after they have been reviewed by Volkert. These appraisals are not done by Volkert, but by individual fee appraisers contracted by the State of Alabama.

Mr. Byrne reviews these appraisals and turns them over to his supervisor for further action.

Mr. Byrne states that Volkert & Associates leased an office building in Elba, Alabama, for the first of March until the completion of the lock and key contract on U.S. 84, between Andalusia, Alabama and Enterprise, Alabama. The contract Volkert had with the State involved road design, appraisal review, relocation, and negotiations/acquisitions. Volkert had the entire contract for preconstruction, from drawing the maps and design of the road, to the actual acquisition of the property for the new road. Volkert reviewed the ALDOT contracted appraisals, and after Volkert reviewed the appraisals, if Volkert had any questions about the procedures or analysis used by the ALDOT contracted appraiser, they would request additional information from that appraiser. This additional information sometimes changes the value, but if these values change, it is due to the ALDOT contracted appraiser choosing to change the value due to a mathematical mistake or a possible omission. Only the ALDOT contracted appraiser is to establish value. After Volkert reviews the supplemental pages, the appraisal and the supplemental pages are sent to ALDOT for a second review. If the second review turns up any more mistakes, then another letter is forwarded to the ALDOT contracted appraiser by way of Volkert. If more supplemental pages are required from the ALDOT contracted appraiser, the pages are sent to Volkert and then forwarded to ALDOT. After all questions are answered and corrected by the ALDOT appraiser, the Right of Way Engineer recommends an approved offer for the acquisition. The appraisal package is assembled and goes to the negotiator for purchase.

As Mr. Byrne states, Volkert was in the process of getting themselves in an office located in Elba, Alabama. Mr. Byrne has had no contact with Volkert, other than personal conversations in Elba, at seminars and appraisal schools. Mr. Byrne approached Volkert & Associates about a position with them on approximately April 15, 2001. On April 24, 2001, ALDOT received its first reviewed appraisal, and Mr. Byrne began his working relationship with Volkert & Associates.

He states that his duties consist of:

- 1) receiving the appraisal reports from the ALDOT contracted appraiser, stamping them in and recording the receipt in ALDOT's office;
- 2) delivering the appraisal reports to Volkert and other consultants for review;

- 3) retrieving reviewed appraisal reports;
- 4) reviewing the ALDOT contracted appraiser's report again; and,
- 5) preparing approval letter for Right of Way Engineer and appraisal package for negotiations.

Mr. Byrne reiterates that the appraisals are not done by Volkert, but are done by an ALDOT contracted individual fee appraiser.

Mr. Byrne further states that he does not approve offers for negotiations, monitor or sign-off on any Volkert contracts, or review any of their appraisals or review their values.

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:

"(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.”

Section 36-25-8 states:

“No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business.”

In addition to asking whether or not he may accept employment with Volkert, Mr. Byrne asks what other general restrictions and/or prohibitions may apply.

In December of 1997, the Ethics Commission rendered Advisory Opinion No. 97-82, which held that:

“A former attorney with ADEM is not prohibited from assisting in matters relating to his law firm’s clients and ADEM, but is solely prohibited from personally appearing on his clients’ behalf.”

That opinion went on to state that:

“A former attorney for ADEM may not use confidential information obtained during the course of his employment in any manner that would assist the law firm or the law firm’s clients in dealing with ADEM and ADEMC.”

Based on the facts as presented, it would not violate the "Revolving Door" provisions of the Alabama Ethics Law for Mr. Byrne to accept employment with Volkert & Associates; however, he may not, for a period of two years after leaving public service, represent Volkert or Volkert's clients before ALDOT.

In addition, while he is not prohibited from working on Volkert projects with ALDOT, he may not use confidential information obtained in the course of his employment with ALDOT, to assist Volkert in any manner.

Based on the facts as provided and the above law, a former Right of Way Specialist with ALDOT may accept employment with Volkert & Associates, an entity contracting with ALDOT, when he has not personally participated in the direct regulation, audit, investigation, or review of Volkert's work, nor was he involved in contract negotiations between Volkert and ALDOT.

Additionally, upon accepting employment with Volkert & Associates, a former Right of Way Specialist with ALDOT may not, for a period of two years after leaving public service, represent Volkert & Associates in any dealings before ALDOT.

Further, a former Right of Way Specialist with the Alabama Department of Transportation may work on projects on behalf of Volkert with ALDOT; however, he may not use confidential information obtained in the course of his employment with ALDOT to assist Volkert in either performing the terms of the contract or in obtaining new business with ALDOT.

CONCLUSION

A former Right of Way Specialist with the Alabama Department of Transportation may accept employment with Volkert & Associates, an entity contracting with ALDOT, when he has not personally participated in the direct regulation, audit, investigation, or review of Volkert's work, nor was he involved in contract negotiations between Volkert and ALDOT.

Upon accepting employment with Volkert & Associates, a former Right of Way Specialist with the Alabama Department of Transportation may not, for a period of two years after leaving public service, represent Volkert & Associates in any dealings before ALDOT.

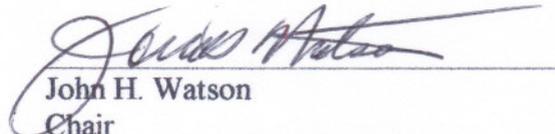
A former Right of Way Specialist with the Alabama Department of Transportation may work on projects on behalf of Volkert with ALDOT; however, he may not use confidential

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information obtained in the course of his employment with ALDOT to assist Volkert in either performing the terms of the contract or in obtaining new business with ALDOT.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on June 6, 2001.



John H. Watson
Chair
Alabama Ethics Commission