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January 8, 2003

ADVISORY OPINION NO. 2003-03

Mr. Jefferey B. Murrell
Hazardous Materials Engineer
Hazardous Materials Section
Materials and Test Bureau
Alabama Department of Transportation
174 Park Place Lane
Alabaster, Alabama 35007

Conflict Of Interest/Former Civil Engineer/
Hazardous Materials Engineer With The
Alabama Department Of Transportation
Seeking Employment With Private
Engineering Firm.

A Civil Engineer with the Alabama Department of Transportation (DOT) may seek and accept employment with a private engineering firm; provided, that he has not personally participated in the direct regulation, audit or investigation of that firm for a period of two years after leaving public service, or for two years after having personally participated in the direct regulation, audit, or investigation of that private entity, whichever time period is longer.

For a period of two years after accepting employment with a private engineering consulting firm, a former Civil Engineer with the Alabama Department of Transportation may not represent that firm back before DOT.

Mr. Jefferey B. Murrell
Advisory Opinion No. 2003-03
Page two

Conflict Of Interest/Civil Engineer/
Hazardous Materials Engineer With The
Alabama Department Of Transportation
Providing Traffic Noise And Air Emission
Analysis Training And/Or Related Services
To Private Engineering Consulting Firms
Doing Business With The Alabama
Department Of Transportation.

A Civil Engineer/Hazardous Materials
Engineer with the Alabama Department of
Transportation may not provide part-time
traffic noise and air emission analysis
training and/or related services to private
engineering consulting firms, when the
training and services relate to how those
consultants deal and interact with DOT.

Dear Mr. Murrell:

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.

QUESTIONS PRESENTED

- 1) May a Civil Engineer with the Alabama Department of Transportation seek and accept employment with any engineering consulting firm in the state of Alabama; provided, he has not personally participated in the direct regulation, audit, inspection, investigation, contract negotiation or evaluation of said private engineering firm?
- 2) May a Hazardous Materials Engineer with the Alabama Department of Transportation provide part-time traffic noise and air emission analysis training for a private engineering consulting firm in the state of Alabama on a consulting basis after-hours, on weekends, while on annual leave, etc.; provided, that he has not personally participated in the direct regulation, audit, inspection, investigation, contract negotiation or evaluation of said private engineering firm?

- 3) May a Hazardous Materials Engineer with the Alabama Department of Transportation provide part-time traffic noise and air emission analysis services, together with environmental document preparation, for a private engineering consulting firm in the state of Alabama on a consulting basis after-hours, on weekends, while on annual leave, etc.; provided, that he has not personally participated in the direct regulation, audit, inspection, investigation, contract negotiation or evaluation of said private engineering firm?

FACTS AND ANALYSIS

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

Jefferey B. Murrell is currently employed by the Alabama Department of Transportation (DOT) as a Hazardous Materials Engineer in the Hazardous Materials Section of the Materials and Test Bureau. His job duties include conducting hazardous materials investigations, supervising and designing corrective action projects, conducting and supervising hazardous waste mediation projects, and supervising and reviewing work activities conducted by state-approved hazardous materials consultants.

In his current job capacity, he has personally participated in the direct regulation and evaluation of several private engineering firms.

Mr. Murrell states that he has no responsibilities in recommending consulting firms for contracts, and he has not been involved in the negotiation of any contracts. He has performed these job duties since February 23, 2002.

From August 15, 1999 to February 22, 2002, Mr. Murrell was employed with DOT as an Environmental Engineer II in the Environmental Technical Section (ETS) of the Design Bureau. His job duties included conducting air emission and traffic noise analysis, developing and conducting air emission analysis training courses, preparing and editing in-house environmental documents, serving as a project manager for several environmental projects, and reviewing and supervising environmental document preparation activities conducted by two consultants.

Mr. Murrell states that he had no responsibilities in recommending consulting firms for contracts, and he was not involved in the negotiation of contracts.

Mr. Murrell also reviewed air emission and traffic noise analysis prepared by various private engineering consulting firms. He wrote his suggestions and review findings to his supervisor or the consultant management project manager, who directly contacted the consultants

about his suggestions and reviews. He had little or no contact with consultants whom he did not directly supervise. Since his job transfer to the Hazardous Materials Section of DOT, he has had very little contact with ETS personnel outside of hazardous materials investigation issues.

Mr. Murrell would like to offer traffic noise and air emission analysis training and services, together with environmental document preparation for various engineering consultants around the state. He states that this is not a service that is provided by the Department of Transportation. However, in the past, it has been provided to consultants on an unofficial basis, if the consultant called and requested it. Since 2001, there has been no in-house training.

Mr. Murrell states that the training would teach consultants how to write documents that are to be submitted to DOT for FHA approval.

He further states that the air/noise analysis would be directly related to the consultant's dealings with the Department of Transportation.

As of earlier this year, DOT does not provide this training to consultants that Mr. Murrell would like to offer. Due to NIH funding requirements, consultants cannot be provided such training. There are no plans for providing any future air emission and traffic noise training until possibly late next year. The only alternative for private consulting firms receiving this training is via out-of-state training providers. Mr. Murrell states that he would perform this technical training only on an after-hours, weekends, annual leave basis. He states that he would not use any public equipment, facilities, materials, human labor or other public property under his discretion or control. He states that he would not accept compensation from any private engineering consulting firm in which there exists a conflict of interest. He states that this technical training is totally removed from and is not part of his current job duties.

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 36-25-1(8) defines a conflict of interest as:

"(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs."

Section 36-25-5(a) states:

"(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain."

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."

While the Ethics Law allows public officials and public employees the opportunity for outside financial interests, those outside interests cannot create a conflict of interest. In the facts before the Commission, the training and services that Mr. Murrell would like to offer are directly related to DOT business and, therefore, would create a conflict of interest.

Based on the facts as provided and the above law, a Civil Engineer with the Alabama Department of Transportation (DOT) may seek and accept employment with a private engineering firm; provided, that he has not personally participated in the direct regulation, audit or investigation of that firm for a period of two years after leaving public service, or for two years after having personally participated in the direct regulation, audit, or investigation of that private entity, whichever time period is longer.

For a period of two years after accepting employment with a private engineering consulting firm, a former Civil Engineer with the Alabama Department of Transportation may not represent that firm back before DOT.

A Civil Engineer/Hazardous Materials Engineer with the Alabama Department of Transportation may not provide part-time traffic noise and air emission analysis training and/or related services to private engineering consulting firms, when the training and services relate to how those consultants deal and interact with DOT.

CONCLUSION

A Civil Engineer with the Alabama Department of Transportation (DOT) may seek and accept employment with a private engineering firm; provided, that he has not personally participated in the direct regulation, audit or investigation of that firm for a period of two years after leaving public service, or for two years after having personally participated in the direct regulation, audit, or investigation of that private entity, whichever time period is longer.

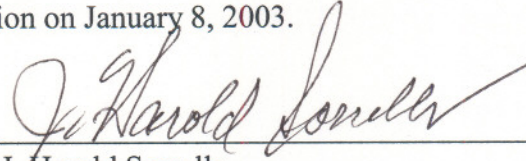
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Mr. Jefferey B. Murrell
Advisory Opinion No. 2003-03
Page seven

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on January 8, 2003.

A handwritten signature in dark ink, appearing to read "J. Harold Sorrells", is written over a horizontal line.

J. Harold Sorrells
Acting Chair in the absence of the Chair/
Vice-Chair
Alabama Ethics Commission