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February 4, 2004

ADVISORY OPINION NO. 2004-01

Mr. George W. Ponder, III
Member, Board of Trustees
Alabama A & M University
1330 County Road 385
Cullman, Alabama 35055

Conflict Of Interest/Former Member Of
College Board Of Trustees Serving As
Subcontractor For Business Under Contract
With Board On Which He Served

A former member of the Alabama A & M University Board of Trustees may serve as a subcontractor for a business under contract with Alabama A & M University, provided, he was not involved in the negotiation of or awarding of the contract to the prime contractor while serving on the Board.

For a period of two years after leaving the Alabama A & M University Board of Trustees, the former member of the Board may not interact with the University on behalf of the prime contractor to whom he is providing services.

Dear Mr. Ponder:

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 member of the Alabama A & M University Board of Trustees serve as a subcontractor for a business under contract with Alabama A & M University?

FACTS AND ANALYSIS

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

George W. Ponder, III, is currently a member of the Board of Trustees for Alabama A & M University. At the present, he is approaching his last days of service as a Trustee, thus wrapping up 12 years of service to the University, the State of Alabama, and the University Faculty/Students under five Alabama Governors.

He states that, as an active Trustee, he has diligently adhered to the Articles involving conflicts of interest under 16-49-29. This section states:

“It shall be unlawful for any member of the board to derive financial benefits in any form from a contract or transaction affecting the interest of the university; to procure, or to be a party in any way, to procuring the appointment of any relative to any position of financial trust or profit; or to influence the appointment or reappointment, retention, dismissal or compensation of any employee of the university except through the prescribed procedures for such purposes. The violation of this provision shall subject the member so offending to removal by the Governor or the board.”

Mr. Ponder states that it is further his understanding that, for some period of time after his appointment is finalized in January of 2004, a modified Conflict of Interest clause would be in effect and to be honored when considering any contractual business with the University.

Mr. Ponder states that his question to the Commission concerns business possibilities with those contractors, businesses, and such who are directly doing business with Alabama A & M University after his term is expired. He states that he may have an opportunity to be on a subcontract with an entity which will hold the prime contract for doing business with Alabama A & M University. He states that this subcontract will place employees of the new business he is considering on that campus. It is his understanding that some newer Trustees are considering similar business dealings as subcontractors. He states that this type of subcontract arrangement could be a new beneficial business for himself after his current term is up, since he would no longer be an active Trustee. But, he does desire to maintain any compliance requirements as an immediate past Trustee.

He states that, since he is considering this option as a new business venture, he would like to know if involvement in this proposed venture would be a conflict of interest, a violation of the Alabama State Code, or a violation of the ethics standards which are enforced by the Ethics Commission.

He states, in closing, that he has considered it an honor to serve our State, the Alabama A & M University community, and those Governors who trusted his decision-making skills involving policies dealing with the financial and physical welfare at Alabama A & M University. He states that it is because of that trust, he is seeking the appropriateness of this possible business venture. To do any less would be to dismiss the level of trust placed upon himself during the last eleven years and ten months as a Trustee for Alabama A & M University and his adherence to the Alabama State Code.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24) defines a public official as:

“(24) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2.”

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 36-25-2(b) in pertinent part states:

“(b) An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the

opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.”

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.”

Generally speaking, there would be nothing in the Ethics Law which would prohibit a former college board of trustees member from serving as a subcontractor for a business under contract with the University on which board he formerly served. However, he may not serve as a subcontractor for a business with which he was involved in awarding or negotiating the contract with that prime contractor.

Based on the facts as provided and the above law, a former member of the Alabama A & M University Board of Trustees may serve as a subcontractor for a business under contract with Alabama A & M University, provided, he was not involved in the negotiation of or awarding of the contract to the prime contractor while serving on the Board.

Additionally, for a period of two years after leaving the Alabama A & M University Board, the former member of the Board of Trustees may not interact with the University on behalf of the prime contractor to whom he is providing services.

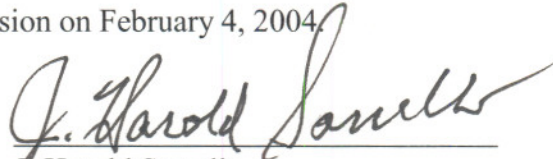
CONCLUSION

A former member of the Alabama A & M University Board of Trustees may serve as a subcontractor for a business under contract with Alabama A & M University, provided, he was not involved in the negotiation of or awarding of the contract to the prime contractor while serving on the Board.

For a period of two years after leaving the Alabama A & M University Board, the former member of the Board of Trustees may not interact with the University on behalf of the prime contractor to whom he is providing services.

AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on February 4, 2004.

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

J. Harold Sorrells
Chair
Alabama Ethics Commission