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STATE OF ALABAMA ETHICS COMMISSION

MAILING ADDRESS
P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS
RSA UNION
100 NORTH UNION
STREET
SUITE 104
MONTGOMERY, AL 36104



James L. Sumner, Jr.
Director

TELEPHONE (334) 242-2997
FAX (334) 242-0248
WEB SITE www.ethics.alalinc.net

April 6, 2005

ADVISORY OPINION NO. 2005-07

Jo Somers, PE
Former City Engineer
City of Madison
1000 Hermitage Avenue
Huntsville, Alabama 35801

Revolving Door/Former City Engineer For
The City Of Madison, Alabama, Providing
Consulting Services To Entities Whose
Work She Reviewed While Serving As City
Engineer

The former City Engineer for the City of
Madison, Alabama, may provide consulting
services through her corporation to entities
whose work she reviewed while serving as
City Engineer, as it is employment with
those entities that is prohibited by the
"Revolving Door" provisions of the Ethics
Law, and not the providing of consulting
services as an independent contractor.

The former City Engineer for the City of
Madison, Alabama, may not, for a period of
two years after leaving public service,
represent an entity to which she is providing
consulting services, or her employer,
Robinsong Ecological Resources, Inc.,
before the City of Madison, Alabama.

Dear Ms. Somers:

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 City Engineer for the City of Madison, Alabama, who is now an employee and shareholder of an Alabama corporation, provide consulting services to several entities whose work she reviewed while in the employ of the City of Madison, Alabama?

FACTS AND ANALYSIS

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

Jo Somers is a professional engineer. In October of 2004, she resigned the position of City Engineer for the City of Madison, Alabama, and she is now an employee and shareholder of Robinsong Ecological Resources, Inc. (RER), an Alabama corporation. She has the opportunity through RER to provide consulting services to several entities whose work she reviewed while in the employ of the City of Madison. She asks whether or not she may engage in this activity without violating the Code of Ethics.

The Alabama Ethics Law, Section 36-25-1(23), Code of Alabama, 1975, 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 36-25-1(2) defines a business with which the person is associated as:

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business."

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(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."

The Ethics Law prohibits a former public official or public employee from accepting employment with a private entity of which he or she has participated in the direct regulation, audit or investigation for a period of two years after leaving the public sector.

The Ethics Law does not prohibit an individual, who may have had regulatory authority, from providing consulting services to a private entity upon his or her departure from public service, as this does not rise to the level of employment with that entity, but is instead an independent contractor/client relationship. However, for a period of two years, Ms. Somers may not represent an entity to which she is providing consulting services, or her employer, Robinsong Ecological Resources, Inc., before the City of Madison, Alabama.

Based on the facts as provided and the above law, the former City Engineer for the City of Madison, Alabama, may provide consulting services through her corporation to entities whose work she reviewed while serving as City Engineer, as it is employment with those entities that is prohibited by the "Revolving Door" provisions of the Ethics Law, and not the providing of consulting services as an independent contractor.

Further, the former City Engineer for the City of Madison, Alabama, may not, for a period of two years after leaving public service, represent an entity to which she is providing consulting services, or her employer, Robinsong Ecological Resources, Inc., before the City of Madison, Alabama.

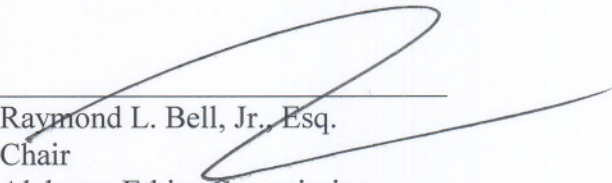
CONCLUSION

The former City Engineer for the City of Madison, Alabama, may provide consulting services through her corporation to entities whose work she reviewed while serving as City Engineer, as it is employment with those entities that is prohibited by the "Revolving Door" provisions of the Ethics Law, and not the providing of consulting services as an independent contractor.

The former City Engineer for the City of Madison, Alabama, may not, for a period of two years after leaving public service, represent an entity to which she is providing consulting services, or her employer, Robinsong Ecological Resources, Inc., before the City of Madison, Alabama.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on April 6, 2005.



Raymond L. Bell, Jr., Esq.
Chair
Alabama Ethics Commission