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June 1, 2005

ADVISORY OPINION NO. 2005-18

Mr. Robert A. Johnson
Former Employee
Alabama Department of Transportation
587 Perry Hill Road
Greenville, Alabama 36037

Revolving Door/Formal Employee Of The
Alabama Department of Transportation
(ALDOT) Providing Consulting Services
Through His Private Business To Entities
Whose Work He Reviewed While Employed
By ALDOT

A former employee of the Alabama
Department of Transportation (ALDOT)
may form a company to provide consulting
services, and may provide consulting
services to entities whose work he reviewed
while employed at ALDOT, 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 through one's own
company.

A former employee of the Alabama
Department of Transportation (ALDOT)
may not represent clients of his consulting
company before the Alabama Department of
Transportation for a period of two years after
leaving such employment.

Dear Mr. Johnson:

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 employee of the Alabama Department of Transportation (ALDOT) provide consulting services through his own company as an independent contractor to entities over whom he had regulatory responsibility during the two years prior to his retirement from ALDOT?

FACTS AND ANALYSIS

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

Robert A. Johnson is retired from the Alabama Department of Transportation (ALDOT). During his employment with ALDOT, he reviewed submissions of contractors for compliance with the contract and specification. He reviewed claims, time extensions and other submissions and requests made by contractors. He made recommendations to his supervisor, who then made the final decision on a particular issue.

Upon his retirement from ALDOT, he formed a company to provide consulting services. His work consists of providing assistance and guidance on contractual issues to companies in the construction industry. He helps contractors to provide the proper documentation for claims for extra compensation and time extension requests. He provides interpretation of contract specifications and requirements. He also assists contractors in developing a comprehensive system for documenting their field construction activities on construction projects.

Mr. Johnson is not an employee of the contractors for whom he performs consulting services, but is paid on an hourly basis for his consulting services through his private company. He is contacted by contractors when they have an issue on which they need his assistance. Upon resolution of the issue, he has no further contact with the contractor unless another issue should arise.

Mr. Johnson states that, to date, his services have been limited to contractors with whom he had no involvement within the last two years of his employment with ALDOT. Since his retirement, he has performed consulting services for five different contractors on various issues, and his work does not involve representing a contractor before ALDOT.

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.”

On April 6, 2005, the Commission rendered Advisory Opinion No. 2005-07, which stated that:

“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.”

Advisory Opinion No. 2005-07 made a distinction in that the “Revolving Door” prohibits an individual from accepting **employment** with an entity over which he or she has participated in the direct regulation, audit or investigation of that private business. The law does not prohibit one from forming his or her own company and providing professional consulting services to those same entities.

It should be pointed out that this exception would not apply in the situation where an individual forms a “shell” company and goes to work as an “independent contractor” for an entity with which he or she was formerly involved in auditing, investigating or regulating. It must be a valid company or corporation with more than one client for this exception to apply.

Based on the facts as provided and the above law, a former employee of the Alabama Department of Transportation (ALDOT) may form a company to provide consulting services, and may provide consulting services to entities whose work he reviewed while employed at ALDOT, 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 through one’s own company.

A former employee of the Alabama Department of Transportation (ALDOT) may not represent clients of his consulting company before the Alabama Department of Transportation for a period of two years after leaving such employment.

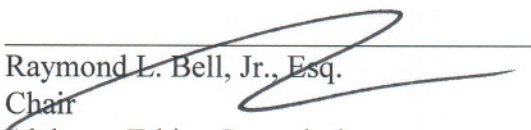
CONCLUSION

A former employee of the Alabama Department of Transportation (ALDOT) may form a company to provide consulting services, and may provide consulting services to entities whose work he reviewed while employed at ALDOT, 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 through one's own company.

A former employee of the Alabama Department of Transportation (ALDOT) may not represent clients of his consulting company before the Alabama Department of Transportation for a period of two years after leaving such employment.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on June 1, 2005.


Raymond L. Bell, Jr., Esq.

Chair

Alabama Ethics Commission