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February 6, 2008

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ADVISORY OPINION NO. 2008-02

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Revolving Door/Former Administrative Assistant For Member Of Mobile County Commission Accepting Employment With Business Contracting With The Mobile County Department Of Environmental Services To Provide Professional Services To The County

For a period of two years after leaving her employment as an administrative assistant for a member of the Mobile County Commission and going to work for an entity that contracts with the Mobile County Department of Environmental Services, a former employee may work on the contract between her employer and the Mobile County Department of Environmental Services, but may not represent her new employer in dealings with Mobile County or interact directly with employees of the Mobile County Department of Environmental Services.

Dear Mr. Ross:

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 administrative assistant for a member of the Mobile County Commission, who accepts employment with a business contracting with the County Department of Environmental Services, be involved in performing the professional services under that contract?

FACTS AND ANALYSIS

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

In mid October 2007, the Department of Environmental Services for Mobile County entered into contract discussions with the Alabama Coastal Foundation, Inc. (ACF). ACF is a non-profit coastal conservation organization. Established in 1993, it is governed by a board of directors, and its mission is to protect the quality of Alabama's coastal resources.

The contract under discussion contemplated that ACF would render technical and professional services in the administration of the Mobile County Coastal Impact Assistance Program. ACF would be paid an hourly rate for personnel time. The term of the contract would continue until the completion of all required services.

Bethany Craft was previously employed as an administrative assistant for a member of the Mobile County Commission. She had no involvement in the contract discussions between the Department of Environmental Services and ACF. Ms. Craft resigned her position with the County effective January 2, 2008, and accepted a salaried position as executive director of ACF. Her employment began on January 7, 2008.

The County and ACF have concluded their contract discussions and wish to enter into a formal contract as described above. Should they do so, Ms. Craft, in addition to her duties as executive director, would perform some of the services due under contract and supervise the performance of others.

Neither party to the proposed contract wishes there to be any violation of the revolving door provisions of the Alabama Ethics Law, and based on this scenario, they have requested this opinion.

The Alabama Ethics Law, Code of Alabama, 1975, 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.”

The revolving door provisions of the Ethics Law regulate the activities of former public officials/public employees for a two-year period after they leave the public sector. One of these prohibitions is that a public official/public employee may not accept employment with a private entity of which that public official/public employee has personally participated in the direct regulation, audit or investigation of that private entity. The Commission has interpreted this section to also prohibit individuals who had been involved in contractual negotiations with a private entity from accepting employment with that entity for a period of two years. Based on the facts as provided, there is no prohibition in Ms. Craft accepting employment with ACF, as she was not involved in the contractual negotiations between the Mobile County Department of Environmental Services and ACF.

The next issue becomes whether or not Ms. Craft may involve herself in working on the contract between ACF and the Mobile County Department of Environmental Services. On December 10, 1997, the 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.”

Based on this, Ms. Craft is not prohibited from working on the project that is the subject of the contract between ACF and the Department of Environmental Services, however, she may not be ACF’s contact person or “point person” in dealings between ACF and the Mobile County Department of Environmental Services.

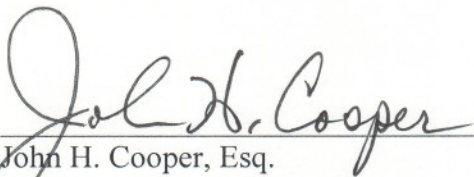
Based on the facts as provided and the above law, for a period of two years after leaving her employment as an administrative assistant for a member of the Mobile County Commission and going to work for an entity that contracts with the Mobile County Department of Environmental Services, a former employee may work on the contract between her employer and the Mobile County Department of Environmental Services, but may not represent her new employer in dealings with Mobile County or interact directly with employees of the Mobile County Department of Environmental Services.

CONCLUSION

For a period of two years after leaving her employment as an administrative assistant for a member of the Mobile County Commission and going to work for an entity that contracts with the Mobile County Department of Environmental Services, a former employee may work on the contract between her employer and the Mobile County Department of Environmental Services, but may not represent her new employer in dealings with Mobile County or interact directly with employees of the Mobile County Department of Environmental Services.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on February 6, 2008.


John H. Cooper, Esq.
Chair
Alabama Ethics Commission