



STATE OF ALABAMA ETHICS COMMISSION



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August 6, 2014

ADVISORY OPINION NO. 2014-03

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Conflict Of Interest/Engineering Firm
Partially Owned By Spouse Of The Director
Of The Chambers County Development
Authority Contracting With The Authority

An engineering firm owned in part by the spouse of the director of the Chambers County Development Authority, may contract to provide engineering services to the Chambers County Development Authority; however, the director may not vote, attempt to influence or in any manner participate in any contracts or issues between the Development Authority and the engineering firm.

A copy of any contract entered into between an engineering firm owned in part by the spouse of the director of the Chambers County Development Authority and the Authority, and paid out of public monies, must be filed with the Ethics Commission within ten (10) after its execution.

Mr. Joseph McNamee Tucker
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Dear Mr. Tucker:

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 an engineering firm owned in part by the spouse of the executive director of the Chambers County Development Authority, contract to provide services with the Chambers County Development Authority?

FACTS AND ANALYSIS

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

The Chambers County Development Authority, referred to herein as the CCDA, is an Industrial Development Council formed under Act No. 2001-410 of the Alabama Legislature. Chambers County is a rural county and the CCDA has only three employees, a director, assistant director/family coordinator and an executive assistant. The director files a Statement of Economic Interests.

For years, the CCDA has been provided engineering services by two companies, one local and one regional with a local office. The regional engineering company recently sold their local office to a limited liability company, hereinafter referred to as H & G, which is owned by two of the persons formerly employed in the local office. One of the principals of the purchasing company is the spouse of the executive director.

The CCDA is governed by a board consisting of 16 directors. The policy of the CCDA is to have board approval of any contract for professional services. None of the directors are related to the executive director. The executive director does not participate in any vote and is not authorized to retain any professional services not approved by the board of directors, but often presents proposals from the companies.

Based on this set of facts, the CCDA requests this Advisory Opinion.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(27) defines a public official as:

“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(15) defines a family member of a public official as:

“The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse’s parents, a sibling and his or her spouse, of the public official.”

Section 36-25-1(2) defines a business with which the person is associated as:

“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 36-25-5(a) states:

“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 36-25-9(c) states:

“No member of any county or municipal agency, board, or commission shall vote or participate in any matter in which the member or family member of the member has any financial gain or interest.”

Section 36-25-11 states:

“Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into.”

The underlying purpose of the Alabama Ethics Law is to prevent the use of one’s public office in a manner that would provide a personal benefit to themselves, a member of their family or a business with which they are associated.

In the facts presented to the Commission, the Ethics Law does not prevent the engineering firm from providing services to the Chambers County Development Authority, but it does prohibit the executive director of the CCDA from doing anything including, but not limited to exerting influence over any contracts between the engineering firm and the CCDA.

Therefore, the executive director may not vote, attempt to influence or otherwise participate in any transaction, potential contracts, proposals, etc. between the engineering firm and the CCDA.

The director may ministerially present proposals that have been submitted to the CCDA for the CCDA’s approval. However, the director may not attempt to influence the approval of any proposal.

Based on the facts as provided and the above law, an engineering firm owned in part by the spouse of the director of the Chambers County Development Authority, may contract to provide engineering services to the Chambers County Development Authority; however, the director may not vote, attempt to influence or in any manner participate in any contracts or issues between the Development Authority and the engineering firm.

A copy of any contract entered into between an engineering firm owned in part by the spouse of the director of the Chambers County Development Authority and the Authority, and

paid out of public monies, must be filed with the Ethics Commission within ten (10) after its execution.

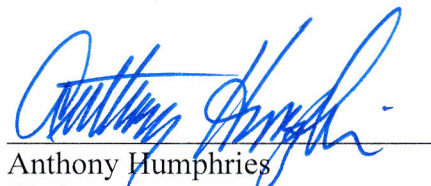
CONCLUSION

An engineering firm owned in part by the spouse of the director of the Chambers County Development Authority, may contract to provide engineering services to the Chambers County Development Authority; however, the director may not vote, attempt to influence or in any manner participate in any contracts or issues between the Development Authority and the engineering firm.

A copy of any contract entered into between an engineering firm owned in part by the spouse of the director of the Chambers County Development Authority and Authority, and paid out of public monies, must be filed with the Ethics Commission within ten (10) after its execution.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on August 6, 2014.



Anthony Humphries
Chair
Alabama Ethics Commission