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December 2, 2015

ADVISORY OPINION NO. 2015-20

Ms. Beatrice M. Forniss
Division Chief
Community and Economic Development Division
Alabama Department of Economic and Community Affairs
3814 Pine Valley Court
Montgomery, Alabama 36116

Revolving Door/Former Employee With
The Alabama Department of Economic And
Community Affairs (ADECA) Accepting
Employment With Engineering Firm
Working With Local Units Of Governments
And Municipalities

A former employee of the Alabama
Department of Economic and Community
Affairs (ADECA) who had no regulatory
authority over an architectural and
engineering firm that does work on behalf of
various governmental entities, but does not
have any dealings with ADECA, is not
prohibited from accepting employment with
that firm.

A former employee of ADECA, for a period
of two years after leaving ADECA, may not
lobby or otherwise represent clients,
including her employer or her employer's
clients back before ADECA.

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Dear Ms. Forniss:

The Alabama Ethics Commission is in receipt of your request for a formal Advisory Opinion of this Commission, and this opinion is rendered pursuant to that request.

QUESTION PRESENTED

May the former Division Chief of the Community and Economic Development Division of the Alabama Department of Economic and Community Affairs (ADECA) accept employment with an architectural and engineering firm when there have been no business dealings between the employee and the firm, or the firm and ADECA?

FACTS AND ANALYSIS

At the outset, it should be pointed out that this opinion merely addresses the issues raised from the perspective of the Alabama Ethics Law and does not consider any other body of law outside the Ethics Act in its conclusion.

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

Beatrice Mills Forniss is the Division Chief of the Community and Economic Development Division of the Alabama Department of Economic and Community Affairs (ADECA). Her responsibilities include managing 23 employees, who deal with federal funds and Community Development Block Grant (CDBG) applications. Ms. Forniss states that she is not hands-on in this process; she merely supervises the Division. She states that the various municipalities apply for grants. The grants come through ADECA and are ranked by the staff through a point system. Ms. Forniss is not involved in the ranking process. Once completed, the rankings are compiled and through Ms. Forniss and the ADECA Commissioner are forwarded to the Governor's Office who then makes the selection. During this process, Ms. Forniss has no dealings with the municipalities who have applied for the grants. While Ms. Forniss will be dealing with various municipalities in her position with Goodwyn, Mills and Cawood, she would not be dealing with any municipalities that she dealt with while at ADECA.

Once the grants are awarded, it is up to the municipality to secure the services of an architectural/engineering firm to work on their behalf. Neither Ms. Forniss, her staff, nor ADECA plays any role in this.

Ms. Forniss has been offered a position as GMC Ambassador, specifically in the role of Marketing/Client Relations with the architectural and engineering firm of Goodwyn, Mills and

Cawood. Goodwyn, Mills and Cawood provides architectural and engineering services to local units of government and municipalities. Ms. Forniss states that she would serve in the role as Ambassador and meet with various governmental entities, Regional Development Commissions, etc. Mr. Forniss has had no dealings with Goodwyn, Mills and Cawood while employed by ADECA, and she states that Goodwyn, Mills and Cawood is not involved in any of the CDBG Grants that come through her Division. Out of an abundance of caution, however, Ms. Forniss has asked Goodwyn, Mills and Cawood to include in her contract that, for a period of two years, she would be prohibited from interacting with ADECA on either Goodwyn, Mills and Cawood's behalf or the on behalf of any of its clients.

Ms. Forniss further states that Goodwyn, Mills and Cawood does not directly do business with ADECA and even though they assist and advise local governmental entities, they are not involved in the grant process through ADECA, nor would she be responsible for any grants if she accepted employment with Goodwyn, Mills and Cawood.

Ms. Forniss acknowledges that she is a public employee as defined in Ala. Code § 36-25-1(26) (1975).

The "Revolving Door" provisions of the Alabama Ethics Law put certain limitations on what public officials and public employees may do after they leave the public sector.

All former public officials and public employees are prohibited for a period of two years after leaving the public sector from lobbying or representing their employer or their employer's clients back before the entity with which they were formerly employed or on which they served.

Ala. Code § 36-25-13(c) (1975) states:

"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."

In addition, an individual who was personally involved in the direct regulation, audit or investigation of a private entity, or who played a discretionary role in any contracts or grants between their agency and that private entity, may not for a period of two years, accept employment with that private entity.

Ala. Code § 36-25-13(e) (1975) states:

“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.”

In the facts before the Commission, Ms. Forniss has had no professional dealings with Goodwyn, Mills and Cawood while employed with ADECA, nor does Goodwyn, Mills and Cawood directly do business with ADECA.

The Commission has addressed this and similar situations on numerous occasions. On October 7, 2015, the Commission rendered Advisory Opinion No. 2015-12, which held that:

“The former Assistant Director of Community Planning and Development for the City of Mobile may, upon her retirement, accept employment with TBG Residential, a real estate developer who applies for and is awarded federal funds through the City's HOME Program, or work as an independent contractor to them when her actions in the application process were ministerial and she did not have any decision-making authority.”

What distinguishes the current situation from that in Advisory Opinion No. 2015-12, is that in the previous opinion the retiring employee had contact with the company she wished to go to work for, but that contact was ministerial. She was not in the decision-making process.

In the current facts, there have been no dealings whatsoever between Ms. Forniss and Goodwyn, Mills and Cawood, the company she would like to accept employment with.

Advisory Opinion No. 2015-12 went on to say that:

“The former Assistant Director of Community Planning and Development for the City of Mobile may not, for a period of two years after leaving the City, represent clients, including her new employer, before the City of Mobile.”

These same restrictions would apply to Ms. Forniss. As an extra precaution, she has asked that Goodwyn, Mills and Cawood write this prohibition into her employment contract.

Likewise, Advisory Opinion No. 2003-24 held that:

“The Director of Education Services with the Alabama Department of Public Health may accept employment with a nursing home regulated by the Department of Public Health upon her retirement, when she has not personally participated in the direct regulation, audit or investigation of that nursing home.”

Based on the facts as provided and the above law, a former employee of the Alabama Department of Economic and Community Affairs (ADECA) who had no regulatory authority over an architectural and engineering firm that does work on behalf of various governmental entities, but does not have any dealings with ADECA, is not prohibited from accepting employment with that firm.

However, that former employee of ADECA, for a period of two years after leaving ADECA, may not lobby or otherwise represent clients, including her employer or her employer's clients back before ADECA.

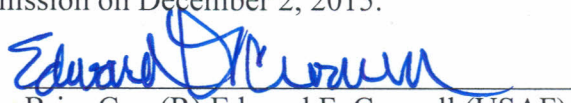
CONCLUSION

A former employee of the Alabama Department of Economic and Community Affairs (ADECA) who had no regulatory authority over an architectural and engineering firm that does work on behalf of various governmental entities, but does not have any dealings with ADECA, is not prohibited from accepting employment with that firm.

A former employee of ADECA, for a period of two years after leaving ADECA, may not lobby or otherwise represent clients, including her employer or her employer's clients back before ADECA.

AUTHORITY

By 3-0-1 vote of the Alabama Ethics Commission on December 2, 2015.


Brig. Gen (R) Edward F. Crowell (USAF)
Chair
Alabama Ethics Commission