



# STATE OF ALABAMA ETHICS COMMISSION



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June 7, 2023

## ADVISORY OPINION NO. 2023-02

Steven "Adam" Spence  
Traffic Engineer  
Alabama Department of Transportation

### Revolving Door / Public Employee

A Traffic Engineer for ALDOT may accept employment from an engineering firm that contracts with ALDOT and has interacted with the Traffic Engineer in his public position when he did not participate in the direct regulation, audit, or investigation of that engineering firm while employed with ALDOT.

A former employee of ALDOT may not represent the interests of their private-sector employee before ALDOT for a period of two years per Ala. Code § 36-25-13(c).

A former employee of ALDOT may not participate in any ALDOT project or other matter for an engineering firm where the former employee participated in the project while employed with ALDOT or where the project was within or under his official responsibilities as a public employee.

Dear Mr. Spence:

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.

### **FACTS**

Mr. Spence is currently a Traffic Engineer for the Alabama Department of Transportation (ALDOT). Mr. Spence intends to leave his current position and is considering employment with Kimley-Horn, a private, civil engineering firm. Kimley-Horn is not a registered principal.

While working for ALDOT, Mr. Spence has interacted with members of Kimley Horn; however, he has not participated in the direct regulation, audit, or investigation of Kimley-Horn. He has not awarded any contracts to Kimley-Horn or approved the payment for any invoices as his position does not have the authority to do so. As a Traffic Engineer, his responsibilities are as follows: managing the Traffic Engineering section, which consists of maintaining/installing traffic signals, lighting, Intelligent Transportation Systems, roadway stripes, markings, legends, signs, RPMs, and delineators within ALDOT ROW; performing traffic studies, developing signal timing plans, labor scheduling, program management, traffic modeling, signal warrant development, safety studies, and any other traffic engineering related field on ALDOT ROW within the SW Region; designing roadway striping layouts for installation on new and existing corridors; designing/reviewing temporary traffic control plans in accordance with the manual on uniform traffic control devices; collecting traffic data; attending plan reviews; operating intelligent transportation systems; reviewing traffic impact studies for commercial/residential developments; utilizing ITS devices for traffic incident management on ALDOT's roadway network; fielding and organizing citizen requests, as it relates to traffic engineering, for services on ALDOT ROW; developing signal timing plans for various intersections; interviewing prospective candidates for employment with The Alabama Department of Transportation; designing and implementing special maintenance projects to address needed repairs along ALDOT's right-of-way; preparing and managing routine maintenance budgets for operating and maintaining traffic devices for all State and United States' routes in the SW Region; responding to emergency events within the Area.

### **QUESTION PRESENTED**

May a former Traffic Engineer with ALDOT accept employment with an engineering firm that contracts with ALDOT and has interacted with the Traffic Engineer in his public position?

### **ANALYSIS**

A Traffic Engineer for ALDOT is a public employee and is subject to the "Revolving Door" provisions of the Ethics Act in Ala. Code § 36-25-13:

(c) 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 or worked pursuant to an arrangement such as a consulting agreement, agency transfer, loan, or similar agreement for a period of two years after he or she leaves such employment or working arrangement. 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.

(f) 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.

(g) No former public official or public employee of the state may, within two years after termination of office or employment, act as attorney for any person other than himself or herself or the state, or aid, counsel, advise, consult or assist in representing any other person, in connection with any judicial proceeding or other matter in which the state is a party or has a direct and substantial interest and in which the former public official or public employee participated personally and substantially as a public official or employee or which was within or under the public official or public employee's official responsibility as an official or employee. This prohibition shall extend to all judicial proceedings or other matters in which the state is a party or has a direct and substantial interest, whether arising during or subsequent to the public official or public employee's term of office or employment.

This question has been answered previously in Advisory Opinion 2017-11 and Advisory Opinion 1997-58:

A former Drafting Section Supervisor with the Alabama Department of Transportation may accept part-time employment providing drafting work with an engineering firm that contracts with the Department of Transportation as he did not personally participate in the direct regulation, audit, inspection, or investigation of the engineering firm while employed with the Department of Transportation, nor was he involved in the negotiation, solicitation, or approval of contracts between the Department of Transportation and the engineering firm for which he intends to go to work.

Since Mr. Spence did not participate in the direct regulation, audit, or investigation of the engineering firm, he may accept employment with the engineering firm. However, he may not represent Kimley-Horn or any other private employer before ALDOT until two years after he leaves his public position. This includes any communications or discussions with ALDOT representatives. If there is a need for such communication, it must be done by another representative/employee of Kimley-Horn.

Further, he may not aid, counsel, advise, consult, or assist in any judicial proceeding or other matter in which the state is a party or has a direct and substantial interest and in which he participated personally and substantially as a public employee or which was within or under his official responsibility. This restriction does not prohibit Mr. Spence from working on ALDOT projects for Kimley-Horn provided he did not participate in the project while working for ALDOT, the project was not within or under his official responsibility and provided Mr. Spence avoids interacting with ALDOT employees on behalf of Kimley-Horn.

Ala. Code § 36-25-8 also prohibits any public employee or public official from using or disclosing confidential information gained in the course of employment in a way that could result in financial gain for any person or business.

### **CONCLUSION**


A Traffic Engineer for ALDOT may accept employment from an engineering firm that contracts with ALDOT when he did not participate in the direct regulation, audit, or investigation of that engineering firm during the course of his employment with ALDOT.

A former employee of ALDOT may not represent the interests of their private-sector employee before ALDOT for a period of two years per Ala. Code § 36-25-13(c).

A former employee of ALDOT may not participate in any ALDOT project or other matter for an engineering firm where the former employee participated in the project while employed with ALDOT or where the project was within or under his official responsibilities as a public employee.

**AUTHORITY**

By 4/0 vote of the Alabama Ethics Commission on June 7, 2023.

  
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John Plunk  
Chair  
Alabama Ethics Commission