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December 7, 2023

ADVISORY OPINION NO. 2023-05

Jeremy Borden
5768 Vendome Drive N
Mobile, Alabama 36609

Public Employee / Associated
Business / Use of Position / Personal
Gain

The Ethics Act does not prohibit employees of ALDOT from contacting, discussing, or entering into business agreements with manufacturers, vendors, consultants, or contractors of ALDOT for the purpose of financial gain for their business provided they conduct all activities related to their private business on their own time and do not otherwise use their position, including any confidential information, or public equipment, facilities, time, materials, human labor, or other public property under their discretion or control, to benefit themselves or their private business, and provided they do not solicit or receive anything, including an opportunity for the private business, for the purpose of corruptly influencing their official action.

This opinion extends only to the restrictions found within the Ethics Act and only to the situation presented. Similar questions must be addressed on a case-by-case basis.

Dear Mr. Borden:

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. Borden and Benjamin Nichols are employees of the Alabama Department of Transportation (ALDOT). Mr. Borden is a Professional Civil Engineer 1 with a working title of "Signal Systems Engineer." Mr. Nichols is a subordinate of Mr. Borden and a Civil Engineer Licensed. At ALDOT, Mr. Borden and his staff are responsible for the design, installation, operations, and maintenance of the Intelligent Transport Systems (ITS) and traffic signal systems. They routinely request purchase orders for various vendors, consultants, and contractors. Their purchases are dictated by state-wide contracts that were crafted outside of their control as well as standard state purchasing rules that require the use of multiple quotes and other competitive bidding and quotation processes. All purchase requests and payments are processed by the Alabama Department of Finance and ALDOT administrators in the Central Bureau. Mr. Borden states that he does not have the ability to "steer" work or payments to a particular company nor does he have the final authority to approve purchase orders or payments.

Mr. Borden and Mr. Nichols co-own a company named "V2XTraffic, LLC." In the past year, they have completed initial designs and provisionally patented a "Wireless Traffic Signal System" with the intention of either licensing or selling the patent. Alternatively, they may manufacture and sell the resulting product themselves. They have developed a working prototype and are refining the prototype into a version 2. They have engaged in this activity at their own expense and on their own time. V2XTraffic, LLC is self-funded between Mr. Borden and Mr. Nichols.

V2XTraffic, LLC hosted a private demonstration of the prototype in the fall of 2022 with individuals from three different companies to assess the viability of the prototype and its potential usefulness in the real world. These individuals worked at the following: Eberle Design, Inc., Temple, Inc., and Southern Lighting and Traffic Systems (SLTS). V2XTraffic, LLC proceeded to patent the system, and provisional patent status was received in June of 2023.

Vance Street Capital is a private equity firm who invests in engineered solutions in the medical and industrial markets. They own the following businesses among others: Eberle Design Inc., Polara Enterprises, Carmanah Technologies, and Diablo Controls. Neither Mr. Borden nor Mr. Nichols have had any contact with Vance Street Capital, Polara Enterprises, Carmanah Technologies, or Diablo Controls.

Temple, Inc. is a vendor with whom Mr. Borden and Mr. Nichols have requested purchases orders from while working at ALDOT for equipment that Temple, Inc. is the sole distributor for. Temple, Inc. sells various brands of devices and types from several companies. One line of equipment sold by Temple, Inc. is Malfunction Management Units (MMU), which are manufactured by Eberle Design, Inc. Mr. Borden and Mr. Nichols only involvement with Eberle Design is in the form of a rare call to their technical support group.

None of the businesses identified by Mr. Borden and Mr. Nichols are currently registered principals.

QUESTIONS PRESENTED

1. In their personal capacity as owners of V2XTraffic, LLC, may Mr. Borden and Mr. Nichols contact, have business discussions with, and enter into a business agreement for the purposes of financial gain with manufacturers, vendors, consultants, and contractors of ALDOT?
2. May V2XTraffic, LLC engage in business with Temple, Inc.
3. May V2XTraffic, LLC engage in business with Southern Lighting and Traffic Systems?
4. May V2XTraffic, LLC engage in business with Eberle Design, Inc.
5. May V2XTraffic, LLC engage in business with Vance Street Capital or the other three companies owned by Vance Street Capital (Polara, Carmanah, and Diablo)?

ANALYSIS

As employees of ALDOT, Mr. Borden and Mr. Nichols are public employees.

- (a) 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.¹

¹ Ala. Code § 36-25-5(a).

- (c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.²

The Ethics Act does not prohibit Mr. Borden or Mr. Nichols from contacting, discussing, or entering into business agreements with manufacturers, vendors, consultants, or contractors of ALDOT, including those listed in the enumerated questions, for the purpose of financial gain for their business provided they conduct all activities related to their private business on their own time and do not otherwise use their position, including any confidential information,³ or public equipment, facilities, time, materials, human labor, or other public property under their discretion or control, to benefit themselves or V2XTraffic, LLC.⁴ The Ethics Act prohibits Mr. Borden and Mr. Nichols from using the influence of their position with ALDOT to secure additional contracts or to otherwise benefit themselves or V2XTraffic, LLC.

As public employees, Mr. Borden and Mr. Nichols may not solicit anything, including opportunities for their business, from anyone who is a lobbyist.⁵ Further, they may not solicit a “Thing of Value” from a lobbyist, subordinate of a lobbyist, or a principal.⁶ They also may not solicit or receive anything, including an opportunity for their business, from anyone for the purpose of corruptly influencing their official action as ALDOT employees.

Therefore, the Ethics Act does not prohibit V2XTraffic, LLC, from engaging in business with any of the companies identified provided they do not solicit or receive anything from them for the purpose of corruptly influencing their official action.

² Ala. Code § 36-25-5(c).

³ Ala. Code § 36-25-8.

⁴ Ala. Code § 36-25-5(c).

⁵ Ala. Code § 36-25-23(c).

⁶ Ala. Code § 36-25-5.1.

CONCLUSION

The Ethics Act does not prohibit employees of ALDOT from contacting, discussing, or entering into business agreements with manufacturers, vendors, consultants, or contractors of ALDOT for the purpose of financial gain for their business provided they conduct all activities related to their private business on their own time and do not otherwise use their position, including any confidential information, or public equipment, facilities, time, materials, human labor, or other public property under their discretion or control, to benefit themselves or their private business, and provided they do not solicit or receive anything, including an opportunity for the private business, for the purpose of corruptly influencing their official action.

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AUTHORITY

By 3/0 vote of the Alabama Ethics Commission on December 7, 2023.



John Plunk
Chair
Alabama Ethics Commission