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STATE OF ALABAMA
ETHICS COMMISSION

MAILING ADDRESS

P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS

RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104



James L. Sumner, Jr.
Director

Hugh R. Evans, III
Assistant Director
General Counsel

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TELEPHONE (334) 242-2997
FAX (334) 242-0248

ADVISORY OPINION NO. 99-24

David R. Boyd
Attorney at Law
Balch & Bingham LLP
Post Office Box 78
Montgomery, Alabama 36101

**Revolving Door/County Engineer Accepting
Employment With Firm Doing Business With
County.**

A county engineer, who performed ministerial functions in the awarding of a competitively bid contract to a hot-mix company to provide services for the county, may accept employment with that hot-mix company, as his involvement in the bid process was limited to sending requests for proposals to interested bidders and determining the identity of the low bidder.

A county engineer, who is allowed to accept employment with a hot-mix company doing business with the county, may not, for a period of two years, represent the hot-mix company before the county engineer's office or the county commission.

As this Advisory Opinion is fact specific to the above referenced circumstances, it is recommended by this Commission that other individuals similarly situated, request an Advisory Opinion for themselves on their particular set of circumstances.

Dear Mr. Boyd:

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 county engineer, who performed ministerial functions in the awarding of a contract to a private hot-mix company, accept employment with that hot-mix company?

FACTS AND ANALYSIS

The facts as presented to the Commission are as follows:

The requesting party is currently a county engineer, who is employed by an Alabama county commission pursuant to the Code of Alabama, 1975, Section 11-6-1. The duties of the county engineer are prescribed by statute, Section 11-6-3. According to the requestor, this section describes the general duties of the requesting party in his current employment.

The Code of Alabama, 1975, Section 11-6-3 states:

"It shall be the duty of the said county engineer or chief engineer of the division of public roads, subject to the approval and direction of the county commission to:

- (1) Employ, supervise and direct such assistants as are necessary to construct and maintain properly the county public roads, highways and bridges;
- (2) Perform such engineering and surveying services as may be required to prepare and maintain the necessary maps, plans and records;
- (3) Maintain the necessary accounting records to reflect the cost of constructing and maintaining the county highway system; and
- (4) Perform such other duties as are necessary and incident to the operation of the county highway system as directed by the county commission."

The requesting party, the current county engineer, wishes to accept employment with a company which is involved in the road-building business and related activities. Currently, the prospective employer is one of several vendors which have contracts with the county to provide certain road building materials, namely hot-mix paving. The prospective employer's contract was awarded pursuant to a competitive bid process in which the prospective employer was determined to be the low bidder. The current contract is for a period of one year. Occasionally in the past, the prospective employer has had similar contracts with the county, but in each instance, the contract was awarded through a competitive bidding process. The requestor of this opinion points out that it is worth noting that the amount of the current contract represents less than 0.05% (5/100 of one percent) of the company's overall revenues. In other words, the current contract is a very minor one in the overall scope of the company's business.

The county engineer was involved in the process leading to the award of the current contract in only a very limited way. In keeping with standard practice, the county engineer's office sent out requests for proposals to interested bidders. Once bids were received and reviewed by the county attorney, the county engineer's office performed the ministerial task of tabulating the bids and advising the county commission as to the identity of the low bidder. The county commission then made the final decision on whether to award the contract to the low bidder or make some different decision. In this instance, the low bidder, i.e., the prospective employer, was selected by the commission. While the county engineer may have the authority to recommend that a bidder other than the low bidder receive the contract (assuming a valid reason for such a recommendation), the requesting party has never had an occasion to recommend any other than the low bidder on the awarding of any contract. There were no negotiations between the county and the prospective employer relative to the current contract.

Once the current contract was awarded to the prospective employer, the county engineer's office's only involvement, thereafter, has been to order delivery of the hot-mix paving as needed and verify, through the engineer's subordinates in the field, the amount of materials received by the county so that proper pavement can be made pursuant to the contract.

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.”

From the facts as presented, it appears that the county engineer's only involvement in the contractual process was issuing requests for bids and making the determination according to standard procedures as to who was the low bidder on the contract.

It further appears that the county engineer had no regulatory authority over the hot-mix company in question.

It appears that the only provision of the “Revolving Door” that would impact the county engineer's employment with the hot-mix company is Section 36-25-13(b), which would prohibit him, for a period of two years, from representing his employer before the county commission or the county engineer's office.

Based on the facts as presented and the above law, a county engineer, who performed ministerial functions in the awarding of a competitively bid contract to a hot-mix company to perform services for the county, may accept employment with that hot-mix company, as his involvement in the bid process was limited to sending requests for proposals to interested bidders and determining the identity of the low bidder.

Further, a county engineer, who is allowed to accept employment with a hot-mix company doing business with the county, may not, for a period of two years, represent the hot-mix company before the county engineer's office or the county commission.

Additionally, as this Advisory Opinion is fact specific to the above referenced circumstances, it is recommended by this Commission that other individuals similarly situated, request an Advisory Opinion for themselves on their particular set of circumstances.

CONCLUSION

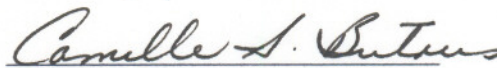
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A county engineer, who is allowed to accept employment with a hot-mix company doing business with the county, may not, for a period of two years, represent the hot-mix company before the county engineer's office or the county commission.

As this Advisory Opinion is fact specific to the above referenced circumstances, it is recommended by this Commission that other individuals similarly situated, request an Advisory Opinion for themselves on their particular set of circumstances.

AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on July 7, 1999.



Camille S. Butrus

Chair

Alabama Ethics Commission