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April 30, 1997

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## ADVISORY OPINION NO. 97-26

David B. Bollie  
Graduate Civil Engineer  
Alabama Department of Transportation  
4043 Camellia Drive  
Montgomery, Alabama 36109

Revolving Door/Engineer With The  
Department Of Transportation Seeking  
Employment With Private Engineering  
Firm.

A Civil Engineer with the Alabama  
Department of Transportation may accept  
employment with a private engineering firm;  
provided, he has not personally participated  
in the direct regulation, audit, inspection,  
investigation, or evaluation of the work of  
that private engineering firm.

Should the Civil Engineer have personally  
participated in the direct regulation, audit,  
inspection, investigation, or evaluation of  
the work of that private engineering firm, he  
may not accept employment with that firm  
for a period of two years after leaving  
employment with the Department of  
Transportation.

Dear Mr. Bollie:

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 Graduate Civil Engineer with the Alabama Department of Transportation seek and accept employment with any private engineering consulting firm in the State of Alabama?

### **FACTS AND ANALYSIS**

David B. Bollie is currently employed at the State of Alabama Department of Transportation in the classification of Graduate Civil Engineer. He intends to seek employment in the private sector and due to the uncertainty of his interpretation of the Alabama Ethics Law, would like to eliminate any potential infraction on his part of State law. Therefore, he is seeking this Advisory Opinion.

His career with the Department of Transportation began in the summer of 1990 while he was in college. He was hired as a Professional Civil Engineer Trainee and placed in the Hydraulic Section of the Design Bureau. This is a classification for people who are in the process of obtaining a degree in civil engineering. He worked during summers and Christmas holidays until his graduation from Auburn University in December of 1992. His duties at the time included drawing cross sections, determining drainage areas, calculating bridge scour, designing storm sewer systems, and any other work that he could "scrounge up" for himself. To his recollection, all of the projects that he worked on were State projects designed in-house. At the time, he answered to anyone who asked him to do something and had no authority over anything whatsoever. He accumulated approximately nine months of service with the State during this time from the summer of 1990 to December of 1992.

In January of 1993, after graduation, he was assigned to full-time, permanent employment in the Hydraulic Section of the Design Bureau and was promoted to the Graduate Civil Engineer classification in February of 1993. However, before he could continue working in the Hydraulic Section, he had to complete the training program that the Department of Transportation requires for their Professional Civil Engineer Trainees and Graduate Civil Engineers. This program required him to observe the daily operations of almost every bureau in the central office of the Department of Transportation and the operations of the Ninth Division in Mobile, Alabama. During the central office rotation, he did nothing but observe. In Mobile, he did have the opportunity to work out on the Dog River Bridge Project for approximately one month. During this time, he mostly observed; however, at times he was allowed to count the number of blows from a pile driver on a pile and report this back to the project engineer. He did have daily contact with the contractor driving the piles, but he mainly observed the person he was assigned to on the project. In another project office in the Ninth Division (also approximately a one month stay), he computed roadway grades and never talked to a contractor. He was also required to observe the

operations of the Ninth Division central office. He finished his training period in October of 1993.

After the training period, he returned to the Hydraulic Section. The chain of command in the Hydraulic Section, as it pertained to Mr. Bollie, started with the Hydraulic Engineer, followed by his immediate supervisor, then himself. There were approximately 15 to 20 people in the Hydraulic Section at that time. There was one other employee, besides himself, under his immediate supervisor at the time. He did not supervise anyone during the time he was in this section. He worked in this section until October of 1995.

This section (his supervisor, himself, and the other employee) worked on what was usually called bridge hydraulics and that was the only part of an entire project at which his section looked. By definition, a structure is considered to be a bridge if it is twenty feet long along the centerline of the roadway. The section was responsible for designing bridge openings for replacement bridges and bridge culverts. The structures would have to be large enough to prevent scour underneath the bridge that could potentially undermine piers, minimize backwater that might flood people upstream, and reduce velocities on the exit side of the bridge to prevent erosion downstream. The section also designed erosion countermeasures for stream banks. The section performed these tasks for all federal, state, industrial access, and county projects that had federal participating money.

Once a structure size was determined, a memo with a structure suggestion was sent for review to the Bridge Bureau. Mr. Bollie's supervisor would sign the Hydraulic Engineer's name to the letter using a "by" statement. Mr. Bollie did not have the authority to sign these memos. The suggestion did not set a structure size in stone. Someone in another bureau did occasionally recommend something else that was used. Mr. Bollie reiterates that the memo just contained a suggestion.

When a project would come in, his supervisor would possibly give it to him to design. In these cases, Mr. Bollie would come up with the best bridge or bridge culvert size and then present it to his supervisor for review. If the supervisor liked what Mr. Bollie had done, the supervisor would tell Mr. Bollie to compose the suggestion memo and the supervisor would sign the Hydraulic Engineer's name to it. His supervisor and himself would go visit the site of every design to make sure all engineering assumptions were correct before the suggestion memo was ever signed. If the supervisor did not like what Mr. Bollie had done, he would direct Mr. Bollie to do something else until he was satisfied with the sizing. Only when the supervisor was satisfied with the design would a suggestion memo be sent.

On occasion, a project designed by a consultant would come in for review. If the project was given to Mr. Bollie for review, he would check the design to see if the calculations used by

the consultant were correct. If his supervisor agreed with the consultant's design, then the suggestion memo so stated. If there was an error or possible better design, Mr. Bollie would go through exactly the same procedure to come up with a design as described in the paragraph before. The suggestion memo was still sent to the Bridge Bureau as usual and could still be treated as just a suggestion. To his recollection, Mr. Bollie never talked with any consultant on the phone concerning their designs. On only three occasions that he can remember during these two years he was in the Hydraulic Section, did he ever meet a consultant on any visit to the project site to check out the engineering assumptions. On one occasion, the design was tricky and just about one person from each Bureau of the Department of Transportation was there to hash out different possibilities. The only reason Mr. Bollie was present was because his supervisor had another meeting in a different part of the State. The consultant was Rust Engineering and no explicit design decisions were made at the meeting. One other occasion was with Volkert and Associates while he was on the training program before he was a part of the Hydraulic Section. On this occasion, Mr. Bollie merely observed a problem the Ninth Division engineers discussed with the consultants and environmentalists about a "virgin" forest they were trying to design around. The final occasion, that he can recall, involved a small project in which a consultant came out to the site while his supervisor and he were there. As far as he can remember, these are the only actual face to face contacts he had with consultants during his two years in the Hydraulic Section. Other than that, his section treated consultant work the same as in-house work.

In October of 1995, Mr. Bollie transferred to the Bureau of Office Engineer in order to take over the implementation of a computer system, called Bid Analysis Management System (BAMS) and is presently doing the same job. The name of the software has since changed to TRNS-PORT. It is an American Association of State Highway Transportation Officials (AASHTO) product. This computer system is composed of many different modules. The modules will perform different tasks once they are fully implemented. The modules he is in charge of are composed of many different modules. The modules he is in charge of are the Proposals and Estimates System (PES), the Letting and Awards System (LAS), and the Decision Support System (DSS). He is in the phase of getting these modules operational right now and deals solely with the software developer.

Info Tech, Inc., the software developer, is the only consultant that he has had contact with since he has been in the bureau. He is not interested in joining a computer company whatsoever. He does not wish to pursue a job with Info Tech, Inc.

Mr. Bollie states that it is clearly evident that he has not had any contact with a private engineering consultant that has affected the way they operate their business or whether or not they will be favored in any way in the eyes of the Department of Transportation, especially since he has not even had the opportunity to have job-related contact in any way with a private

engineering consultant in at least a year and three months. Therefore, he respectfully requests permission to pursue employment with any private engineering consultant that may have previously done work with the Department of Transportation and would like a formal Advisory Opinion on this question.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24) states:

"(24) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

Section 36-25-1(8) states:

"(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs."

Section 36-25-1(2) states:

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. 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 36-25-13(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."

Based on the above law and the facts as presented, Mr. Bollie is not prohibited from seeking and accepting employment with a private engineering firm that he has not directly inspected, regulated, audited, or investigated in the course of his employment with the Department of Transportation.

While Mr. Bollie seeks carte blanc approval from the Alabama Ethics Commission to seek employment with any engineering firm in the State of Alabama, the Ethics Law prohibits him from accepting employment with any firm that he may have personally participated in the direct regulation, audit, or inspection of.

From the facts as provided, however, in the request for an opinion, it does not appear as if Mr. Bollie has personally participated in the direct regulation, audit, inspection, investigation, or evaluation of the work of any of the above referenced consulting or engineering firms.

Further, should Mr. Bollie have personally participated in the direct regulation, audit, or inspection of a private engineering firm during his term of employment with the Alabama Department of Transportation, he may not seek employment with that firm for a period of two years after leaving State service.

### CONCLUSION

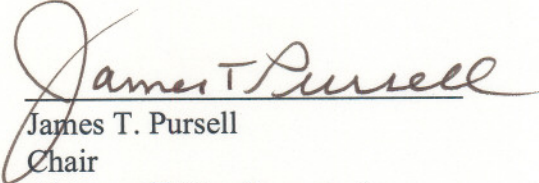
A Civil Engineer with the Alabama Department of Transportation may accept employment with a private engineering firm; provided, he has not personally participated in the direct regulation, audit, inspection, investigation, or evaluation of the work of that private engineering firm.

Should the Civil Engineer have personally participated in the direct regulation, audit, inspection, investigation or evaluation of the work of that private engineering firm, he may not accept employment with that firm for a period of two years after leaving employment with the Department of Transportation.

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**AUTHORITY**

By 4 - 0 vote of the Alabama Ethics Commission on April 30, 1997.

  
James T. Pursell  
Chair  
Alabama Ethics Commission