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September 3, 2003

ADVISORY OPINION NO. 2003-39

Mr. Charlie King, Jr.
Lowndes County Commissioner/
Owner, C. K. Trucking Company
3476 County Road 9
Tyler, Alabama 36785

Conflict Of Interest/Lowndes County
Commissioner Contracting With
Subcontractor On Construction Activity In
Lowndes County, Alabama

A member of the Lowndes County
Commission may provide hauling services
for a subcontractor in construction activity
for the Hyundai supplier facility in Lowndes
County; however, he may not vote, attempt
to influence or otherwise participate in any
matters involving the prime contractor, the
subcontractor and the County Commission.

Dear Mr. King:

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 construction hauling company employing a member of the Lowndes County Commission provide professional construction services for a \$25 million manufacturing project that will include local funds (\$3.6 million) as a part of the County's, or municipalities' thereof, business incentive package?

FACTS AND ANALYSIS

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

Charlie King, Jr. is the owner of C. K. Trucking Company and also serves as a member of the Lowndes County Commission. He has been approached by a subcontracting company to perform hauling services for the construction activity of a local Hyundai supplier facility in Lowndes County, Alabama.

The prime contractor, Cherokee Construction Company, hired the subcontracting company to perform industrial site work for the Lowndes County Industrial Development Board, which is a member of a three-panel authority called the Lowndes County Cooperative District. The Lowndes County Cooperative District is comprised of a member from the Lowndes County Commission, the Lowndes County Industrial Development Board and a member from the Lowndes County Water Authority. Mr. King does not serve as a member of the local cooperative district.

Cherokee Construction Company was selected through a competitive bidding process, administered by a quality assurance team comprised of the Hyundai supplier engineering firm, Goodwyn, Mills & Cawood, South-Central Alabama Development Commission and the Lowndes County Administrator and Treasurer, Jacquelyn Thomas.

Mr. King cites Advisory Opinion No. 99-58, which states:

"A surveying company employing a member of the Butler County Commission may provide professional engineering and surveying services to Butler County; provided, that the County Commissioner not vote, attempt to influence or otherwise participate in any matters relating to the business dealings between the surveying company and the County; that the County Commissioner not disclose any confidential information obtained in the course of his service on the County Commission that would affect or provide a benefit to the surveying company of which he is employed; that the County Commissioner not be involved in any

aspect of the dealings between the County Commission and his employer regarding the contract; that the County Commissioner not represent the surveying company before the County Commission, nor have any other business dealings on behalf of the surveying company with the County Commission; and further, that a copy of any contract is filed with the Ethics Commission within 10 days after the contract has been entered into."

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24) defines a public official as:

"(24) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2."

Section 36-25-1(2) defines a business with which the person is associated as:

"(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 36-25-1(8) defines a conflict of interest as:

"(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 36-25-9(c) states:

“(c) No member of any county or municipal agency, board, or commission shall vote or participate in any matter in which the member or family member of the member has any financial gain or interest.”

The Commission further addressed the matter in April of 2001, when they rendered Advisory Opinion No. 2001-26, which held that:

“A member of the Town Council of Lisman, Alabama, who is in the septic tank and sewage business, may bid on a project with the Town of Lisman, when the project will be paid for through a grant administered by the Town; provided, that all aspects of the project are done through competitive bid, and that the member of the Town Council of Lisman is not involved in the drawing of the specifications, the awarding of the bid or the enforcement of the contract.”

From the facts as provided, the original contract was done through a competitive bid process, with no direct involvement of Mr. King or the Lowndes County Commission.

Based on the facts as provided and the above law, a member of the Lowndes County Commission may provide hauling services for a subcontractor in construction activity for the Hyundai supplier facility in Lowndes County; however, he may not vote, attempt to influence or otherwise participate in any matters involving the prime contractor, the subcontractor and the County Commission.

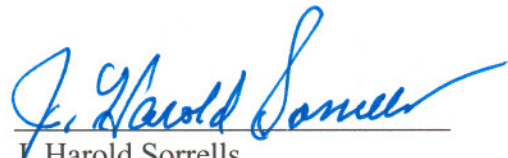
CONCLUSION

A member of the Lowndes County Commission may provide hauling services for a subcontractor in construction activity for the Hyundai supplier facility in Lowndes County; however, he may not vote, attempt to influence or otherwise participate in any matters involving the prime contractor, the subcontractor and the County Commission.

Mr. Charlie King, Jr.
Advisory Opinion No. 2003-39
Page five

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on September 3, 2003.



J. Harold Sorrells
Chair
Alabama Ethics Commission