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February 6, 2013

ADVISORY OPINION NO. 2013-01

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Revolving Door/Former Director Of
Technology For Trussville City Schools
Accepting Employment With Vendor Who
Has Done Business With The Trussville
City Schools

The former Director of Technology for the
Trussville City School System may accept
employment with Clear Winds
Technologies, a vendor who has provided
services to the School Board, when he was
involved in the awarding of the contract
from the School System to Clear Winds in
and around 2006 and 2007, and had nothing
but ministerial involvement since that time.

Dear Mr. Goforth:

The Alabama Ethics Commission is in receipt of your request for an opinion of this Commission, and this opinion is issued pursuant to that request.

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QUESTION PRESENTED

May the former Director of Technology for the Trussville City School System accept employment with a vendor with whom he was involved in awarding a contract to some six or seven years ago?

FACTS AND ANALYSIS

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

Matthew I. Goforth, Esquire represents Shawn Nutting. Shawn Nutting is the Director of Technologies for the Trussville City School System. In July of last year, the school replaced the then serving Superintendent, with a new Superintendent. That new Superintendent is installing her own administration, and Mr. Nutting has been placed on administrative leave. Both Mr. Goforth and Mr. Nutting believe his termination is imminent.

In light of these events, Mr. Nutting has been aggressively seeking alternate employment. He has been in discussions with Clear Winds Technologies ("Clear Winds"), and it is Mr. Goforth's understanding that both parties would like for Clear Winds to be able to hire Mr. Nutting.

Mr. Nutting's involvement with Clear Winds while employed with Trussville City Schools, is as follows:

In and around 2006 and 2007, Trussville City Schools contracted to install an ACCESS video conferencing lab in the Hewitt-Trussville High School, and Hewitt-Trussville Middle School. The equipment purchased was purchased through the Alabama Joint Purchasing Program, which is a State sponsored purchasing consortium for K-12 schools. At that time, Clear Winds was one of the few State approved and recommended Cisco contractors. Mr. Nutting and his Department recommended that the school use Clear Winds for this installation contract because of the State recommendation.

In or around late 2008, Trussville City Schools discontinued using Clear Winds for the Trussville City Schools' Cisco needs, and the school had no further dealings with Clear Winds until February of 2011. On February 22, 2011, the school received an invoice from Clear Winds for the renewal of the school's Cistera telephone recording license. This was for a license renewal for equipment purchased in 2005. The invoice was in the amount of \$3,265.00. Mr. Nutting approved the payment of this invoice. Mr. Nutting's only other involvement with Clear Winds occurred in the summer of 2012. Trussville City Schools was set to host a State Professional Development Seminar during the summer, and the seminar was to take place using

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the Hewitt-Trussville High School video conferencing lab. Mr. Nutting had his technicians check

the video conferencing lab equipment and determined it was not operational prior to the conference. Mr. Nutting then had his secretary to contact Clear Winds to repair the lab, since they were the company that originally installed it. Mr. Nutting's secretary arranged the schedule for Clear Winds to go to the school and work with Trussville City School employees to repair the video conferencing lab. Mr. Nutting did not call Clear Winds, nor did he work with them to repair the video conferencing lab. As the Department's Supervisor, he simply approved the payment of the \$5,200.00 invoice for the block of support hours for professional services to repair and reconfigure the Cisco/Tandberg video conferencing equipment in the lab. Mr. Nutting has had no other dealings with Clear Winds.

Based on these facts, they respectfully request an opinion from the Ethics Commission.

The "Revolving Door" provisions of the Ethics Law prescribe certain activities that are barred by employees and officials once they leave the public sector.

Section 36-25-1(26) defines a public employee as:

"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 36-25-5(a) states:

"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."

Section 36-25-13(b) states:

“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(d) states:

“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.”

Most critical to this opinion is Section 36-25-13(d).

For a period of two years, Mr. Nutting may not accept employment with a vendor that he has personally participated in the direct regulation, audit or investigation of that private entity, or has recommended, approved or negotiated a contract with that vendor.

In the facts before the Commission, any negotiations between Mr. Nutting and Clear Winds happened back in 2006 or 2007. His actions since that time on two occasions were merely ministerial functions being performed under the previously existing contract.

In Advisory Opinion No. 2001-46, the facts indicated that an Environmental Planning Specialist with ALDOT, had been involved in regulating, auditing or investigating a private entity while with ALDOT; however, that activity had taken place more than two years prior to his leaving ALDOT. That opinion held that:

“An Environmental Planning Specialist III with ALDOT may not provide environmental consulting services to firms or other private entities with which he personally participated in the direct regulation, audit, or investigation of that entity while employed with ALDOT, for a period of two years after retiring, or **for two years after having personally participated in the direct regulation, audit, or investigation of that private entity, whichever time period is longer.**” (Emphasis added.)

Based on this previous opinion, as well as the facts set out, more than two years have elapsed since Mr. Nutting was involved in negotiating a contract with Clear Winds; therefore, there is no prohibition in his accepting employment with Clear Winds.

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Even though he may accept employment with Clear Winds, he may not, for a period of two years, represent Clear Winds in any dealing back with the Trussville City School System.

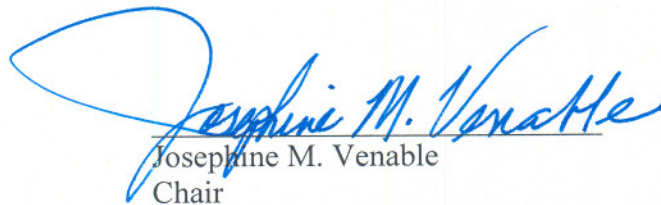
Based on the above law and the facts as provided, the former Director of Technology for the Trussville City School System may accept employment with Clear Winds Technologies, a vendor who has provided services to the School Board, when he was involved in the awarding of the contract from the School System to Clear Winds in and around 2006 and 2007, and had nothing but ministerial involvement since that time.

CONCLUSION

The former Director of Technology for the Trussville City School System may accept employment with Clear Winds Technologies, a vendor who has provided services to the School Board, when he was involved in the awarding of the contract from the School System to Clear Winds in and around 2006 and 2007, and had nothing but ministerial involvement since that time.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on February 6, 2013.



Josephine M. Venable
Chair

Alabama Ethics Commission