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ADVISORY OPINION NO. 2023-01

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Conflict of Interest / Consulting / Business
with which a Public Employee is Associated
/ Personal Gain

The Ethics Act does not prohibit a public employee who is the E-911 Director of the Pike County Emergency Communications District from establishing a private consulting company and providing services to a company that has interacted with him in his public position to provide goods or services to member agencies and departments with the Pike County ECD provided he does not use his position to benefit himself or his consulting company and has not already used his position to create the opportunity for himself or his business.

The Ethics Act does not restrict member agencies and departments of the Pike County ECD from procuring goods or services from a company that is a client of the E-911 Director's private consulting company.

A public employee whose consulting company provides services to another company, which is not a business with which the public employee is associated, should avoid promoting the company and their

products to member agencies and departments.

A public employee shall not solicit or receive any money in addition to that received by the public employee in an official capacity for advice or assistance on matters concerning the Legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member.

This opinion extends only to the restrictions of the Ethics Act and applies only to the facts presented.

Dear Ms. Arrington:

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. David Morgan is the E-911 Director of the Pike County Emergency Communications District. The Pike County Emergency Communications District (ECD) is a political and legal subdivision of the state (Ala. Code § 11 -98-2), and Mr. Morgan is a public employee (Ala. Code § 36-25-1 (26)).

Mr. Morgan's responsibilities as E-911 Director include the management of the county's emergency communications center and support and maintenance of an emergency communications system that includes telephone, radio, and other telecommunications resources. Additionally, he provides resources and assistance with the communication needs of various public entities within the county. Mr. Morgan seeks to form a consulting business through which he would offer services such as technology design and support, contract management, financial management, organizational structuring, and training services.

Mr. Morgan would not disclose any confidential information obtained through his employment

with the Pike County ECD that could result in financial gain to any person or business. Mr. Morgan further understands that all work done in conjunction with the potential consulting company be done on his own time and that there may be no use of any public equipment, facilities, time, materials, human labor, or other public property under his discretion or control to assist him in operating the consulting company or in obtaining customers for the company.

Mr. Morgan specifically asks the Ethics Commission whether a conflict of interest exists if he were to pursue this private endeavor. One of Mr. Morgan's potential clients could include a company with a specific history with the Pike County ECD and some of its member agencies. Mr. Morgan submits the following timeline for the Commission's understanding.

- In the fall of 2021, Mr. Morgan as E-911 Director obtained 4 demonstration radios from Echo911, LLC for testing purposes.
- Mr. Morgan as E-911 Director had a phone call with the owner/operator of Echo911 to learn more about the technology.
- Around December 2021, a law enforcement agency within the jurisdiction of the Pike County ECD requested to test 10 more demonstration radios from Echo911. Mr. Morgan as E-911 Director facilitated the request through an in-person meeting with the owner/operator of Echo911 and by picking up the radios.
- In January 2022, the Pike County ECD developed a subcommittee to research and explore radio technologies for use by its member agencies. The radio subcommittee is made up of representatives from ten separate agencies or departments within Pike County. Mr. Morgan serves on the subcommittee. The subcommittee's first meeting was January 7, 2022.
- On January 10, 2022, Mr. Morgan as E-911 Director obtained 2 demonstration radios from Motorola Solutions, Inc. for testing purposes.
- In August 2022, a second agency looked to Mr. Morgan as E-911 Director to facilitate a request for 30 additional demonstration radios from Echo911.
- On August 10, 2022, Mr. Morgan, in his personal capacity and on his own time, had a phone call with the owner/operator of Echo911. The phone call between Mr. Morgan and the owner/operator of Echo911 resulted from an intermediary third-party who identified Mr. Morgan as someone who could possibly assist Echo911 with a technical issue. The nature of the call was centered on Echo911 and its then-current technical need.
- On August 23, 2022, the owner/operator of Echo911 contacted Mr. Morgan directly to discuss Mr. Morgan's potential to help Echo911 with various company-specific needs. Mr. Morgan would like to establish a consulting company that could provide technology design and support, contract management, financial management, organizational structuring, and training services for clients such as Echo911.
- On September 6, 2022, an invoice was issued to the Pike County ECD by Echo911 for the 44 total demonstration radios being tested within Pike County at that time.
- On or about September 6, 2022, two additional agencies asked to test an additional 30

- demonstration radios from Echo911. Mr. Morgan as E-911 Director facilitated the request.
- On September 12, 2022, the radio subcommittee met. Mr. Morgan as E-911 Director made a formal recommendation for a radio technology solution that is not the same technology used by Echo911. It is his professional opinion that a different technology best serves the needs of the member agencies and departments. The subcommittee rejected Mr. Morgan's recommendation. Also at that meeting, it was announced that one member agency has made the determination to pursue yet a third technology from yet another Company.

Mr. Morgan as E-911 Director has a specific history with Echo911. As illustrated in the above timeline, Mr. Morgan's professional recommendation to the radio subcommittee was for a technology other than that offered by Echo911. Despite his role as E-911 Director and as someone who possesses subject matter expertise in the area of emergency communications, Mr. Morgan is not the final decision maker for the member agencies and departments that make up the Pike County ECD. In other words, not only are the member agencies and departments within the Pike County ECD separate legal entities, but they also operate autonomously from the Pike County ECD even when there is opportunity for cohesion.

QUESTIONS PRESENTED

1. If he were to ensure that he did not disclose confidential information obtained through his employment with Pike County ECD and that all work be done on his own time, may Mr. Morgan establish a private consulting company and work with Echo911 without violating the Ethics Act?
2. If the answer to Question 1 is yes, is there any prohibition of member agencies and departments within the Pike County ECD against procuring goods or services from Echo911 should any one independently determine that Echo911 best meets their independent needs?
3. If the answer to Question 1 is yes, what Ethics Act provisions, if any, would apply as it relates to Echo911 and Pike County ECD.

ANALYSIS

There is nothing in the Ethics Act that would prohibit Mr. Morgan from establishing a private consulting company or working with Echo911 provided he does not use his position, including any public equipment, facilities, time, materials, human labor, or other public property under his discretion or control, to benefit himself or his private company and provided he does not use any confidential information obtained from his position in a way that could result in financial gain

for any person or business.¹

There is nothing in the Ethics Act that would prohibit member agencies and departments within the Pike County ECD from procuring goods or services from Echo911.

As a potential client of Mr. Morgan's proposed consulting company, Echo911 would not be considered a business with which Mr. Morgan is associated.² However, Mr. Morgan should avoid promoting Echo911 and their products to member agencies and departments within the Pike County ECD to avoid obtaining any personal gain for himself or his consulting company through his public position. Mr. Morgan may also not receive the consulting opportunity from Echo911 for the purpose of corruptly influencing an official action.³ This does not prohibit Mr. Morgan from continuing to facilitate requests from member agencies and departments within the Pike County ECD regarding Echo911 provided he is not marketing Echo911 or their goods and services in the process of that facilitation.

This opinion extends only to the restrictions of the Ethics Act and applies only to the facts presented.

CONCLUSION

The Ethics Act does not prohibit a public employee who is the E-911 Director of the Pike County Emergency Communications District from establishing a private consulting company and providing services to a company that has interacted with him in his public position to provide goods or services to member agencies and departments with the Pike County ECD provided he does not use his position to benefit himself or his consulting company and has not already used his position to create the opportunity for himself or his business.

The Ethics Act does not restrict member agencies and departments of the Pike County ECD from procuring goods or services from a company that is a client of the E-911 Director's private consulting company.

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¹ Ala. Code §§ 36-25-5(a, c); Ala. Code § 36-25-8.

² Ala. Code § 36-25-1(2).

³ Ala. Code § 36-25-7.

Legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member.

This opinion extends only to the restrictions of the Ethics Act and applies only to the facts presented.

AUTHORITY

By 3/1 vote of the Alabama Ethics Commission on February 1, 2023.



John Plunk
Chair
Alabama Ethics Commission