

**Alabama Ethics Commission**  
**Summary of Advisory Opinion Issued August 5, 2020**

Advisory Opinion No. 2020-03

In Advisory Opinion No. 2020-03 (Fillmer), the Alabama Ethics Commission (“Commission”) advised that under the specific facts presented, and subject to certain limitations, a former public employee could consult with private sector investors on the development of an economic development project to be presented to the public employee’s former public agency within two years of the public employee leaving public employment.

Mr. Larry Fillmer is the former Executive Director of the Auburn Research and Technology Foundation (“ARTF”) and the former Executive Director for Auburn University’s Office of External Engagement & Support (“EES”). Mr. Fillmer was a public employee by virtue of those positions. He retired from both positions effective March 31, 2020. Mr. Fillmer submitted the request for an advisory opinion asking whether he could, within two years of leaving public employment, consult with private sector investors on an economic development proposal to ARTF, and if so, what were the restrictions on such an arrangement.

As a former public employee Mr. Fillmer is subject to the “Revolving Door” provisions of the Alabama Ethics Act at Ala. Code § 36-25-13. Generally, the “Revolving Door” provisions of the Ethics Act place restrictions on how former public employees and public officials may interact with the public agency with which they were previously employed or served, for a period of two years after leaving such employment or service. Under the facts presented, the Commission examined four separate “Revolving Door” provisions.

First, the Commission addressed Ala. Code § 36-25-13(c), which generally prohibits former public employees from representing clients before the board, agency, commission, or department of which he or she is a former employee, for two years after leaving public employment. With respect to that section, Mr. Fillmer informed the Commission that, pursuant to a draft consulting agreement he submitted with his request for an advisory opinion, he cannot represent the private sector investors before Auburn University or ARTF for a period of two years beginning March 31, 2020. The Commission advised that provided Mr. Fillmer abides by that clause—which, practically speaking, means he would not have any contact with either Auburn University or ARTF on behalf of the private sector investors—there would be no violation of Section 13(c).

Second, the Commission addressed Ala. Code § 36-25-13(d), which generally prohibits former public officials and other department directors and purchasing/procurement agents from entering into, soliciting, or negotiating contracts, grants or awards with the agency with which he or she was a member of employee, for two years after leaving public employment. No facts were presented indicating Mr. Fillmer was going to be involved in the solicitation or negotiation of a contract, grant, or award, but the Commission advised that if such solicitation or negotiation became necessary, Mr. Fillmer would be prohibited from doing so for two years after his retirement.

Third, the Commission addressed Ala. Code § 36-25-13(f), which generally prohibits former public employees and public officials from soliciting or accepting employment from an individual or entity the public official or employee participated in regulating, auditing, or investigating. Under the facts presented, Mr. Fillmer did not interact with the private sector investors regarding the project prior to his retirement. Therefore, he neither directly regulated, audited or investigated these those investors while publicly employed, so the Commission concluded Section 13(f) did not apply.

Fourth, the Commission addressed Ala. Code § 36-25-13(g), which generally prohibits public officials and public employees from acting as an attorney for or providing aid, counsel, advice, or assistance to a person in connection with any “judicial proceeding or other matter in which the state is a party or has a direct and substantial interest” and in which the former public employee or public official personally participated in their public capacity.<sup>1</sup> Under the facts presented, Mr. Fillmer did not personally or substantially participate in any matter involving the private sector investors or this project they proposed to work on, and will not be aiding, advising, counseling or consulting on any matter that he personally participated. Therefore, the Commission concluded Section 13(g) did not apply.

In addition to the “Revolving Door” provisions, the Commission also advised that the Ethics Act’s restrictions on the use of confidential information gained during public employment applied to Mr. Fillmer as well.<sup>2</sup> In the draft agreement Mr. Fillmer submitted with his request, it states that Mr. Fillmer “will not use or disclose confidential information gained in the course of or by reason of his former positions with ARTF and Auburn University.” The Commission advised that as long as Mr. Fillmer abides by that requirement, there would be no violation of the Ethics Act’s confidentiality restrictions.

A copy of Advisory Opinion No. 2020-03 can be accessed on the Commission’s website at <http://ethics.alabama.gov/docs/pdf/AO%202020-03%20Fillmer,%20Larry.pdf>.

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<sup>1</sup> While Section 13(g) specifically refers to restrictions on former public employees and public officials acting as an attorney for another person in a judicial proceeding, the Commission has broadly interpreted the “aid, counsel, advise, consult or assist in representing” language and the “other matter in which the state is a party or has a direct and substantial interest” language to extend the applicability of this section to former public employees and public officials who are not lawyers and to situations other than traditional legal proceedings. *See* AO2017-07 (Newton), available at <http://ethics.alabama.gov/docs/pdf/AO2017-07.pdf.pdf>.

<sup>2</sup> *See* Ala. Code § 36-25-8.