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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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LUTHER STRANGE
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Bryan Taylor
Member, Alabama State Senate
150 South Perry Street
Post Office Box 2069
Montgomery, Alabama 36102-2069

Legislators – Double Dipping – Contracts –
State Departments and Agencies – Act No.
2010-760 – Montgomery County

The Legislative Double Dipping Prohibition Act does not prohibit a legislator from being an employee of a private law firm that may receive contracts to represent state governmental entities and public educational entities if the legislator does not personally perform any work covered by those contracts, the legislator does not have a financial interest in the firm greater than five percent, and the legislator is not otherwise employed by the state as that term is used in sections 36-27-1 or 16-25-1 of the Code of Alabama.

The Legislative Double Dipping Prohibition Act is applicable to legislators and regulates the conduct of legislators. As such, Act 2010-760 does not prohibit state governmental entities or public educational entities from entering into contracts with a law firm that employs a legislator. But, if a legislator violates any of the conditions regarding employment, and there are no statutory exceptions that are applicable, the contract between the state agency and the private entity that employs the legislator will be void. The state governmental entity or public

educational entity would thereby be relieved of further payments under the contract, and the legislator would be personally liable to the State of Alabama for the amount of any employment compensation received under the contract.

Dear Senator Taylor:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

Under the Legislative Double Dipping Prohibition Act, Act 2010-760 ("Act"), may a legislator be an employee of a law firm that receives contracts to represent state governmental entities and public educational entities from time to time if the legislator does not perform any work on matters covered by those contracts and does not have an equity interest in the law firm?

Conversely, how are the Double Dipping Provisions applicable to state governmental entities and public educational entities, i.e., may state governmental entities and public educational entities enter into contracts with a law firm that employs a legislator if the legislator does not perform any work on matters covered by those contracts and does not have an equity interest in the firm?

FACTS AND ANALYSIS

In your request, you informed this Office that you are employed as an associate attorney at the law firm of Capell & Howard, P.C., a full-service law firm of approximately 35 attorneys, some of whom represent various state governmental and public educational institutions. As an associate attorney, you have no "equity interest" or financial interest in the firm. Further, your law firm has established a Chinese wall separating your practice from the work performed by other attorneys at the firm who are under contract with any state

governmental entity or public educational institution. Your letter also noted that, as a senator, you are not a member of the Contract Review Permanent Legislative Oversight Committee; you do not have the authority to approve or disapprove any public contract; nor do you have any authority to direct the expenditure of state funds by a state agency.

Recently, the Legislature passed Act 2010-760, which is known as the Double Dipping Prohibitions Act. In a nutshell, this particular act prohibits a legislator from being employed with a state governmental entity or educational institution while at the same time being an elected official in the Legislature. Your particular inquiry seeks guidance regarding whether any of the provisions of this act are violated when a legislator is merely an employee of a private firm, and whether this act poses particular prohibitions for state entities seeking to contract with private entities that may employ a legislator.

The Legislative Double Dipping Prohibition Act provides as follows:

Any other provision of law to the contrary notwithstanding, and except as provided in subsection (c), a member of the Legislature, during his or her term of office, may not be an employee of any other branch of State government, any department, agency, board, or commission of the State, or any public educational institution including, but not limited to, a local board of education, a two-year institution of higher education, or a four-year institution of higher education.

2010 Alabama Acts No. 2010-760, § 1(b).

The Act extends the prohibition beyond regular state employment and public educational employment by also defining "employee" to include the following:

(1) An employee as defined in Section 36-27-1, Code of Alabama 1975, or a teacher as defined in Section 16-25-1. An employee as defined in this subsection shall not include any person receiving pension benefits from the Retirement Systems of Alabama.

(2) A person who is *personally providing services* under a personal or professional services contract paid for by the department, agency, board, commission, or educational entity, including the Department of

Postsecondary Education or a two-year institution of higher education, except that persons appointed by any court or any district attorney in this State to provide legal services on a temporary, case-by-case, or part time, basis shall not be considered an employee for purposes of this section.

(3) A person who has a *substantial financial interest by reason of ownership of, control of, or exercise of power over any interest greater than five percent* of the value of any corporation, partnership, company, joint venture, or other business entity that is providing goods or services under any contract paid for by the branch, department, agency, board, commission, or educational institution, including the Department of Postsecondary Education or a two-year institution of higher education, except for contracts awarded pursuant to competitive bidding, on sealed bids, to the lowest responsible bidder, and except where the contract service of the business or the business entity with the State branch, department, agency, board, commission, or educational institution consists of acting as a qualified public depository for a public depositor under Chapter 14A of Title 41 of the Code of Alabama 1975. The competitive bidding requirements of this subdivision do not apply during an emergency or disaster situation where the legislator is the single or sole source provider of necessary emergency equipment or services.

Id. (emphasis added).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). Nothing in the Act prohibits a legislator from merely being an employee of a private-sector company or firm that may do business under contract with a state governmental or public educational entity from time to time where the legislator-employee (1) does not “*personally provid[e] services*” under the contract; (2) does not have a “*substantial financial interest*” of greater than five percent in the company or firm; and (3) does not have

another position which would meet the definition of employment as set forth in either sections 36-27-1 or 16-25-1 of the Code of Alabama.

Therefore, based upon the plain language of the Act, it is the opinion of this Office that a legislator's private employment with a law firm that represents, under contract, a state department, agency, board, or commission, or a public educational institution, does not violate the Act if the legislator does not personally work on matters covered by that contract; the legislator does not have ownership of, control of, or exercise power over any interest greater than five percent of the value of the firm; and the legislator is not otherwise employed by the State as this term is used in either sections 36-27-1 or 16-25-1 of the Code of Alabama.

Your second inquiry questions the imposition or burden placed on state agencies or educational institutions that may contract with a company that employs a legislator. The Act, however, regulates the conduct of legislators, not the conduct of private employers or of state governmental and public educational entities. Yet, in the instance that a legislator becomes a prohibited contractual "employee" under the Act, any contract held by that legislator's private employer with the State or public educational entity would be deemed void. *Id.* at § 1(d). As long as the legislator is not a prohibited "employee," the contract is valid. Therefore, it is the opinion of this Office that a state governmental entity or a public educational entity may contract with a law firm that employs a legislator if the legislator does not perform any work covered by the contract and does not have a financial interest in the firm greater than five percent.

This opinion addresses the applicability of the Legislative Double Dipping Prohibition Act, and this Office understands from your request that you and your firm have already consulted with the staff of the State Ethics Commission concerning the applicability of the State Ethics Law.

CONCLUSION

The Legislative Double Dipping Prohibition Act does not prohibit a legislator from being an employee of a private law firm that may receive contracts to represent state governmental entities and public educational entities if the legislator does not personally perform any work covered by those contracts, the legislator does not have a financial interest in the firm greater than five percent, and the legislator is not otherwise employed by the state as that term is used in sections 36-27-1 or 16-25-1 of the Code of Alabama.

Honorable Bryan Taylor
Page 6

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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:



BRENDA F. SMITH

Chief, Opinions Division

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