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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Barry Mask
Member, House of Representatives
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Legislators – Double Dipping – Contracts –
Economic Development – Act 2010-760 –
Elmore County

Act 2010-760 does not prohibit a legislator from being employed as the executive director of the Elmore County Economic Development Authority (“ECEDA”), a private, nonprofit corporation. Even if the ECEDA receives a funding grant from a state agency, a legislator is not prohibited from being employed as the executive director of the ECEDA.

Dear Representative Mask:

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

QUESTIONS

1. May a legislator be employed as the executive director of ECEDA without violating the prohibitions in Act 2010-760?

2. If the answer to Question 1 is yes, would the opinion change if ECEDA received any amount of its funding via grants administered by a state-level executive agency such as the Alabama Department of Economic and Community Affairs? Would this funding be viewed as a professional or personal services contract?

FACTS AND ANALYSIS

Your request states that on August 25, 2009, you signed an employment contract with the Elmore County Economic Development Authority to serve as its executive director through July 27, 2014. The contract can be extended beyond November 5, 2014. You further state that ECEDA is a 501(c)(3) non-profit corporation formed under the Alabama Nonprofit Corporation Act. The general purpose of the ECEDA is to render aid and encouragement in the economic development of Elmore County. The board of directors of ECEDA supervises the performance of the executive director and the board is comprised of 13 directors. The directors are appointed by the chambers of commerce of various cities and towns within Elmore County, by the municipalities within the county, by the Elmore County Board of Education, by the Elmore County Commission, and by election of at-large members by the sitting board members. No director may hold office or be a qualified candidate for any elected public office.

The ECEDA seeks funding through public and private sources. Currently, the cities in Elmore County and the Elmore County Commission provide annual funding to ECEDA pursuant to the authority set forth in sections 11-47-11 and 11-3-11(19) of the Code of Alabama and Amendment 772 of the Constitution of Alabama. Approximately 30 to 40 percent of ECEDA's annual budget is received through voluntary contributions from private businesses. The ECEDA does not currently receive any grants for funding from any state-level departments, agencies, boards, or commissions. In the future, however, ECEDA may seek grants from the Alabama Department of Economic and Community Affairs ("ADECA") or other executive branch agencies involved in the promotion of economic development.

Act 2010-760, the Legislative Double Dipping Prohibition Act, essentially prohibits a legislator from being employed with a state governmental entity or educational institution while at the same time serving as a member of the Legislature. The act extends the prohibition beyond regular state employment and public educational employment by 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.

2010 Alabama Acts No. 2010-760, Sect. 1(b) (emphasis added).

Based upon the facts presented, employment as the executive director of the ECEDA does not make one an employee under any of the three provisions of section 1(b) of Act 2010-760. First, the executive director is not an employee as set forth in sections 36-27-1 or 16-25-1 of the Code of Alabama. Second, the executive director is not providing services under a personal or professional services contract to a state agency, department, board, commission or an educational entity. Third, the executive director does not have a substantial financial

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interest of greater than five percent in the ECEDA and, further, the ECEDA is not providing goods or services under a contract to a state agency, board, commission, or educational entity.

Even if the ECEDA should receive a grant from a state-level executive agency such as ADECA, it does not appear from the facts presented that the executive director has a personal or professional services contract with the state agency providing the grant. Each fact situation should be evaluated on a case-by-case basis to be sure there is no violation of Act 2010-760.

You may also wish to seek an opinion from the State Ethics Commission to determine if there are any possible ethics law violations.

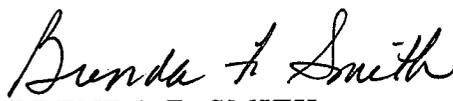
CONCLUSION

Act 2010-760 does not prohibit a legislator from being employed as the executive director of the Elmore County Economic Development Authority, a private, nonprofit corporation. Even if the ECEDA receives a funding grant from a state agency, a legislator is not prohibited from being employed as the executive director of the ECEDA.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

LUTHER STRANGE
Attorney General
By:


BRENDA F. SMITH
Chief, Opinions Division

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