

OFFICE OF THE GOVERNOR

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DEPARTMENT OF COMMERCE

GREG CANFIELD
SECRETARY OF COMMERCE

January 30, 2019

Othni Lathram
Legislative Services Agency
Alabama State House
Montgomery, AL 36130

Dear Othni,

In advance of tomorrow's meeting of the Ethics Review Council I have drafted and attached my remarks. Please distribute them to the members of the Council as you see fit.

Thank you for your assistance in tomorrow's hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Canfield".

Greg Canfield

enclosure

REMARKS BEFORE THE ETHICS REVIEW COMMISSION

by Greg Canfield, Secretary of Commerce, Alabama Department of Commerce

January 31, 2019

In the December 2010 special session, the Alabama Legislature passed three bills that made sweeping changes in the ethics laws of our State. As these bills were being drafted, debated and amended on the floors of the Alabama House and Senate, a great deal of care and effort was taken so as not to have these laws impede job-creating economic development activity across our state. As a member of the House at that time, I recall our ultimate passage of the ethics reform package - a package that only provided exceptions to two types of activities and clearly reflected the legislative intent to provide safe harbor for education related activities and economic development activities.

Drawing from the exceptions for economic development activities granted in the 2010 ethics reforms and coupled with the fact that the statutes governing the Alabama Department of Commerce explicitly speak to Commerce's authorization to accept and confidentially engage with economic development projects until they become a matter of public record, the normal activity of site consultants and other economic development professionals as projects were negotiated were not considered to be lobbying and were therefore not required to register as lobbyists. It is important to underscore here that the ethics law protections against elected and public officials using their office for unlawful financial gain or the act of a third party providing something of value to unlawfully influence legislative action, regulations or securing of grants or contracts with the State were never in question nor are they in question now.

Over the past several years, a small number of site consultants and competing state economic development agencies began to postulate that Alabama's ethics laws could be interpreted so as to require site consultants and other economic development professionals to register as lobbyists and become subject to the accompanying requirements, such as 1) registration obligations, 2) training requirements, 3) quarterly disclosure obligations, 4) requirements to disclose their clients (who would then be considered principals) and ending any degree of confidentiality, 5) be restricted with their clients from the ability to enter into contingency agreements. This discussion became a competitive disadvantage and a talking point among a number of site consultants who began to question a number of concerns, such as the ease of doing business in Alabama, the lack of clarity on the issue and the potential for uncertain legal exposure of doing business in Alabama and questioning whether the job-creating companies with economic development projects would even consider Alabama with confidentiality remaining uncertain.

In an effort to bring clarity to this issue, the Economic Development Association of Alabama decided to approach the Ethics Commission for an Advisory Opinion on the matter. During a public hearing on the matter before the Alabama Ethics Commission on August 16, 2017, an attorney from the attorney general's office expressed his opinion that a plain-language reading of the Alabama ethics laws could be interpreted such that economic developers could be considered lobbyists. During this hearing, Commissioners heard from a variety of economic developers who expressed concerns that this interpretation would damage the confidential nature of most

projects and that the high degree of regulation requirements and disclosures could result in fewer companies looking to expand or locate in Alabama. Responding to these arguments, the Commission chose to render no Advisory Opinion and laid it before the Alabama Legislature to clarify the matter.

In response to the Alabama Ethics Commission request for legislative action, HB 317 was adopted during the 2018 Legislative Session. HB 317 created a safe harbor for "Economic Development Professionals" to provide that they are not lobbying when seeking economic development incentives, subject to certain exceptions. The law was written with a sunset provision such that it expires on April 1, 2019 absent any action by the Alabama Legislature. HB 317 was crafted as a bridge toward a more permanent solution. The time for advancing a more permanent solution is now, early in the 2019 Regular Session before the April 1st expiration of HB 317.

Much of the focus has been limited to the role of site consultants and while that group of professional economic developers was primary to the language drafted in HB 317, there are others who play a vital role in their support of job-creating economic development whose activities should be articulated so as not to be defined as lobbying. These are: 1) Chamber of Commerce staff and volunteers, 2) professional services providers (e.g., accountants, engineers, attorneys), 3) individual businesses supporting economic development (e.g., employees of banks, utilities, etc.), 4) employees of prospects, 5) public employees supporting economic development projects, and 6) industrial development authority employees/board members.

The economic development community in Alabama recognizes the vital role our ethics laws play in protecting the public trust in state and local government. We support and do not propose to change the ethics law's focus on preventing actions which might be taken by parties to corruptly influence elected officials, public officials or public employees. We support and do not propose to change the ethics law's focus on preventing elected officials or public officials from using the mantle of their office or position for personal financial gain.

At the same time, it can be argued that well-intentioned laws created to establish regulatory boundaries can often result in unintended consequences. The recommendation of the Alabama Ethics Commissioners in 2017 that this issue be addressed and clarified by the Alabama Legislature and the subsequent legislative passage of HB 317 in 2018, clearly recognized that labeling the activity of individuals seeking to advance specific, good faith economic development or trade promotion projects as being engaged in lobbying was not in the best interests of the general welfare of our State and its public who benefit from this job-creating activity. It is now time to advance a more permanent resolution to this issue.