



Everything New Orleans

The Times-Picayune

Contracts raised ethics questions

Ex-Jindal counsel has canceled them

Saturday, April 10, 2010

By Robert Travis Scott

Capital bureau

BATON ROUGE -- The Louisiana attorney general's office raised questions about possible ethical issues and advised Gov. Bobby Jindal's former executive counsel to seek a state Board of Ethics advisory opinion after he contracted to provide legal services to state agencies earlier this year, according to state documents.

But Alexandria lawyer Jimmy Faircloth said he did not seek an advisory opinion because he was confident his no-bid government contracts were in compliance with state ethics laws. He canceled the work agreements and reimbursed his fees last week, however, when asked about them by a news reporter.

The contracts with the Louisiana Tax Commission and the Louisiana Board of Massage Therapy drew criticism from Jindal and put Faircloth on the ethics board's radar for possible review.

"Bottom line; we weren't aware of it," Jindal said. "I don't think he should have entered into those contracts. I'm glad he's canceled them and I'm glad he's paid the money back. I think that was the best thing for everybody."

Ethics board Chairman Frank Simoneaux said that because the matter had surfaced in news reports, the board would likely take a look at the issue to see if any investigation is warranted. He gave no indication of whether he thought a violation had occurred.

Faircloth left the governor's office in July 2009 to run for a seat on the state Supreme Court. He lost that race and started a private law practice in Alexandria. He said the ethics code prohibits him from contracts and compensation with agencies within the office of the governor until July 2011, but the Tax Commission and massage therapy board are not part of that office.

He said he is not restricted by another section of the ethics code that prohibits legislators and a long list of state officials from taking state contracts while serving in their position and for one year after their public service has ended. The prohibition is on the officials, their spouses and firms they own.

Although that list specifically includes "the executive counsel to the governor," the law provides an exception for officials who perform certain legal work for state agencies approved through the attorney general's office. Faircloth said his work for the boards fits that exception.

Faircloth helped the Legislature draft that section of the law as part of Jindal's ethics overhaul in 2008.

While conducting a routine review of the massage board contract last month, the attorney general's office asked Faircloth to address whether the agreement fell within the ethical boundaries of the state's ethics code regarding government work by past state officials.

"While I have no reason to disagree with your legal analysis, I would appreciate a follow up that would include either a formal opinion from the Board of Ethics or reference to a verbal opinion from the board," Assistant Attorney General Richard McGimsey wrote to Faircloth on March 26.

Faircloth had signed a no-bid contract in January with the Tax Commission valued up to \$20,000 for legal services and assistance in preparing legislation for the current lawmaking session. The contract was to expire at the end of June.

He billed the agency for \$3,500 in services but the state revenue department, which has administrative oversight of the commission, incorrectly sent him a check for \$7,000, tax commission administrator Charles Abels said. The money has been returned.

Both Faircloth and Abels said Tax Commission Chairman Pete Peters had requested Faircloth's assistance. No Tax Commission board vote was taken on the contract, which as a state legal services agreement was submitted to the attorney general's office for review and approved.

Although the contract says approval must also be given by the state office of contractual review, which is an agency in the governor's division of administration, the contract was never submitted to that office. Division of administration spokesman Michael DiResto said that contracts of \$20,000 or less in value do not require the division's scrutiny.

Faircloth was hired in March by the massage therapy board, which needed assistance in revamping its administrative and regulatory functions. The massage board's chairman said she learned about Faircloth through her business associate Mark Kruse, a longtime member of the state chiropractic board who served on that panel with Faircloth's wife, who is a chiropractor.

The contract was approved by the board for services at \$175 per hour valued up to \$30,000 through June. Although Faircloth provided detailed recommendations for revamping the massage board's operations, he had not yet billed the agency and received no compensation. The attorney general's office had not yet approved the massage board contract when Faircloth canceled it on April 1.

The attorney general's office said in a statement that it had "raised questions about the ethical issues" of the contracts, and its letters to Faircloth centered on the massage board contract. Faircloth responded with a letter March 18 explaining his interpretation of the ethics code.

McGimsey wrote back advising Faircloth to seek an opinion from the ethics board. An advisory opinion offers guidance as to what actions might be legal or illegal under the ethics code.

"Considering the likelihood that other state agencies will be contacting you for legal representation it may be best for all of us if a formal opinion is obtained which is broad enough to cover a multitude of public entities who may wish to retain your legal services," McGimsey wrote.

Faircloth said he did not need an opinion because a similar one for a state lawmaker already had been issued by the ethics board.

A year ago, the law partner of state Sen. Rob Marionneaux Jr., D-Livonia, wanted to represent Southern University in a lawsuit and requested an ethics board advisory opinion to see if the firm would be in violation of the code for taking a state contract.

The resulting ethics board opinion reflected little on Faircloth's situation, because the law partner severed his services and compensation from Marionneaux's firm as part of his effort to get the work legally. The ethics board said that because the contract would be between the law partner individually, as opposed to with the law firm, then the ethics code would not prohibit the agreement.

Faircloth's work for the Tax Commission included assistance in preparing legislation that likely would make him ineligible for further contracting with the agency for a period of time. The bills

would create an increased fee for the commission and move the agency from under the department of revenue into the office of the governor. Were that to occur, Faircloth would be prohibited from contracting with the commission again until July 2011, even by his interpretation of the law.

The Tax Commission fee bill is set for a committee hearing Monday.

.....

Robert Travis Scott can be reached at rscott@timespicayune.com or 225.342.4197.

©2010 timespic