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April 4, 2018

**ADVISORY OPINION NO. 2018-02**

Ms. Afrika Parchman  
General Counsel  
Birmingham City Schools  
2015 Park Place  
Birmingham, Alabama 35203

Public Official/Conflict of Interest/Elected  
School Board Member continuing to be  
employed as Union Organizer

An elected member of the Birmingham  
School Board may continue to be employed  
as a union organizer so long as she does not  
represent any school employees of the City  
of Birmingham.

An elected member of the Birmingham  
School Board may not vote, attempt to  
influence or otherwise participate in any  
matter that comes before the School Board  
that involves the American Federation of  
Teachers ("AFT"), her employer, or in  
which AFT is involved. The elected board  
member may, however, participate in  
disciplinary matters, appeals, etc. that do not  
involve AFT clients and otherwise perform  
her duties as a School Board member.

Dear Ms. Parchman:

The Alabama Ethics Commission is in receipt of your request for a formal Advisory  
Opinion of this Commission, and this opinion is rendered pursuant to that request.

### **QUESTION PRESENTED**

Is there a conflict of interest with Ms. Terri Michal, a member of the Birmingham School Board, continuing to work for the American Federation of Teachers (“AFT”), but not within the Birmingham City School System while simultaneously serving on the Birmingham City School Board?

### **FACTS AND ANALYSIS**

The facts as have been presented to this Commission are as follows:

Terri Michal was elected to the Birmingham Board of Education in 2016. Prior to that election, Ms. Michal worked as a union organizer for the American Federation of Teachers (“AFT”) and Birmingham City Schools was within her assigned area. Since being elected to the Birmingham Board of Education, Ms. Michal continues to work for AFT as a union organizer, but no longer covers the Birmingham City Schools. She plans to work as an AFT representative in other districts, while she serves as a board member with the Birmingham Board of Education. As a union organizer, she provides support to teachers in cases of disciplinary actions against them and in filing grievances against supervisors. She works closely with the system's central office employees (chief of staff, director of schools, etc.) in the handling of these grievances and write ups. As a member of the Birmingham Board of Education, her responsibilities include reviewing and approving all disciplinary actions such as leave without pay, demotions, and/or terminations that are recommended by the superintendent. Employees who contest any disciplinary action by the superintendent may appear at a hearing before the Board for the Board to determine the final disposition of the disciplinary action taken against them.

Ms. Michal is elected to public office. Therefore, she is a public official.<sup>1</sup> AFT is a business with which she is associated because she is an employee of AFT.<sup>2</sup> Consequently, she may not use her official position to benefit herself, a family member, or AFT, a business with which she is associated.<sup>3</sup> Ms. Michal may not use confidential information gained in the course of her service on the Birmingham Board of Education to benefit her in her private employment with AFT or any other person.<sup>4</sup>

Ms. Afrika Parchman

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<sup>1</sup> Ala. Code §36-25-1(27)

<sup>2</sup> Ala. Code §36-25-1(2)

<sup>3</sup> Ala. Code §36-25-5(a)

<sup>4</sup> Ala. Code §36-25-8

As a union organizer with AFT, Ms. Michal provides support to teachers in cases of disciplinary actions against them and in filing grievances against supervisors. While she no longer works within the Birmingham School System in her private employment, she does represent school employees from other systems and before other Boards of Education in an attempt to minimize or reverse disciplinary actions against those employees. At the heart of the matter is concern that based on her Union work and job duties she will be predisposed to make decisions that favor employees who appear before her in her official capacity, but who are not represented by AFT, and that this alone could be a conflict of interest. In other words, is she able to hold both positions at the same time without violating the Ethics Act? As we have noted before, the Commission must respect, and balance, a public official's private interests and public responsibilities except where conflict "cannot be avoided."<sup>5</sup>

"A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs."<sup>6</sup> *Emphasis added.* This concept most often finds its expression when a public official uses his or her official position to benefit themselves, their family or businesses with which they are associated in violation of Ala. Code § 36-25-5. We have, as well, recognized that a conflict could exist if an official represents the interests of a client of their business before their official body. See, e.g., AO2003-38 ("A member of a law firm may serve on an Industrial Development Authority when his or her law firm represents clients before the Industrial Development Authority; however, that member may not vote, attempt to influence or otherwise participate in any matter that comes before the Industrial Development Authority that involves his or her law firm."); see also AO1997-67 (in a 3-2 vote the Commission found that a member of the Birmingham Board of Education may vote to hire a *former* client of his law firm to conduct an audit for School Board because there were no matters currently pending with the law firm).

Based on the facts provided, Ms. Michal's work experience does not create an *irreconcilable* conflict for her. Moving forward, Ms. Michal cannot use her position to benefit herself, her family, or any business with which she is associated. Ms. Michal is prohibited from representing any employee who is employed with the Birmingham School System because that representation would create a conflict of interest. It would place her in an adversarial role with those whom she supervises as a member of the School Board. Likewise, she may not vote, Ms. Afrika Parchman

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<sup>5</sup> Ala. Code §36-25-2(b) ("It is also essential to the proper operation of government that those best qualified be encouraged to serve in government. Accordingly, legal safeguards against conflicts of interest shall be so designed as not to unnecessarily or unreasonably impede the service of those men and women who are elected or appointed to do so. An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.")

<sup>6</sup> Ala. Code §36-25-1(8)

attempt to influence or otherwise participate in any matter that comes before the School Board that involves AFT, her employer, or in which AFT is involved. She may, however, participate in disciplinary matters, appeals, etc. that do not involve AFT clients and otherwise perform her duties as a School Board member.

Ms. Michal was elected to exercise her independent judgment and that judgment is informed by her professional and personal experiences. There is no provision in our Act that prohibits a public official from deliberating and voting on matters consistent with their individual opinions so long as they are not doing so for their personal gain, or that of a family member, a business with which they are associated<sup>7</sup> or based on having received something to corruptly influence their official action.<sup>8</sup>

Therefore, there is no conflict of interest created simply in Ms. Michael being employed as a union organizer while also serving as a public official on the Birmingham Board of Education.

### CONCLUSION

An elected member of the Birmingham School Board may continue to be employed as a union organizer so long as she does not represent any school employees of the City of Birmingham.

An elected member of the Birmingham School Board may not vote, attempt to influence or otherwise participate in any matter that comes before the School Board that involves the American Federation of Teachers ("AFT"), her employer, or in which AFT is involved. The elected board member may, however, participate in disciplinary matters, appeals, etc. that do not involve AFT clients and otherwise perform her duties as a School Board member.

### AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on April 4, 2018.

  
Jerry L. Fielding, Ret. Sr. Circuit Judge  
Chair  
Alabama Ethics Commission

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<sup>7</sup> Ala. Code §36-25-5(a)

<sup>8</sup> Ala. Code §36-25-7