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August 7, 2019

**ADVISORY OPINION NO. 2019-09**

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Conflict of Interest / Architecture and Engineering Firm Partially Owned By A Member of the City of Mountain Brook Board of Education Contracting With the Board.

A firm in which a member of a board of education is a shareholder and employee, may contract to provide professional services to that board of education provided the public official does not influence or attempt to influence any contracts between the firm and the board of education or otherwise use his position on the board for private financial gain – for himself, a family member or a business with which he is associated. Ala. Code §36-25-5(a).

A copy of any contract entered into between a firm in which a member of a board of education is a shareholder and an employee and the board upon which he sits that is paid out of state, county or municipal funds must be filed with the Ethics Commission within ten (10) days after its execution. Ala. Code §36-25-11.

A member of a board of education may fully participate on behalf of his architecture and engineering firm on any project or contract involving the appointing authority for the board on which he sits provided the project or contract does not involve that board and the member does not use his position as a member to help his architecture and engineering firm obtain business with the City. Ala. Code §36-25-5(a).

A member of a board of education may not share any confidential information he obtains as a member of the Board that could result in financial gain for himself, his firm or any other person or business. Ala. Code §36-25-8.

Dear Mr. Robichaux:

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

### **FACTS**

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

Mr. Robichaux is outside counsel for Goodwyn, Mills and Cawood (GMC), an architecture and engineering firm with offices in Alabama, Florida, Georgia, South Carolina and Tennessee. Jeffrey Brewer is employed with GMC as the Chief Executive Officer (CEO) and he is also a shareholder of the firm. Mr. Brewer was recently appointed as a member of the Board of Education of the City of Mountain Brook (MBBOE). These positions are uncompensated. GMC regularly provides professional services to public entities in Alabama, including school systems. GMC previously had contracts with MBBOE prior to Mr. Brewer's appointment and intends to continue

doing business with MBBOE in the future. Mr. Brewer and GMC also intend to seek future business opportunities with the City of Mountain Brook (City), a separate governmental entity from MBBOE.

Mr. Brewer is a licensed architect, a citizen of Mountain Brook, and a parent of children in the MBBOE system. Mr. Brewer believes that his professional expertise could provide a benefit to MBBOE. Accordingly, Mr. Brewer would like to lend his expertise to MBBOE as an architect whenever he can be helpful without creating a conflict of interest or a risk of private financial gain.

Mr. Brewer, GMC and MBBOE are all sensitive to potential ethics law issues that could arise from Mr. Brewer's public service and thus sought informal written guidance before Mr. Brewer was appointed to MBBOE. The informal advice provided to Mr. Brewer informed him he could serve as a member of the MBBOE while GMC seeks work from the MBBOE provided he would be required to recuse himself as a Board member and as a shareholder and employee of GMC from all matters involving any potential contract between the two; he must provide a copy of any contract between MBBOE and GMC would have to be provided to the Ethics Commission within 10 days of execution; he is not permitted to reveal confidential information obtained as a member of MBBOE to GMC or to anyone else or any other business that would materially affect their financial interest. Now that Mr. Brewer has been appointed to MBBOE, GMC and Mr. Brewer are seeking a formal advisory opinion on the matter.

### **QUESTIONS PRESENTED**

1. May an architecture and engineering firm in which a member of the City of Mountain Brook Board of Education is a shareholder and employee contract to provide professional services to the City of Mountain Brook Board of Education?
2. May a member of the City of Mountain Brook Board of Education who is also a shareholder and employee of an architecture and engineering firm provide technical advice to the City of Mountain Brook Board of Education on matters involving his architecture and engineering firm if such technical advice does not affect his or his firm's financial interests?
3. May a member of the City of Mountain Brook Board of Education who is also a shareholder and employee of an architecture and engineering firm participate in contracts between the City of Mountain Brook and his firm?

### ANALYSIS

In the facts presented to the Commission, and consistent with previous Advisory Opinions from the Commission, the Ethics Law does not prevent GMC from providing professional services to MBBOE. Therefore, the answer to the first question is yes, GMC, a firm in which Mr. Brewer, a member of MBBOE, is a shareholder, may contract to provide professional services to MBBOE provided Mr. Brewer does not influence or attempt to influence any contracts between GMC and MBBOE or otherwise use his position on the MBBOE for private financial gain – for himself, a family member or a business with which he is associated. Ala. Code §36-25-5(a). As a general matter, Mr. Brewer may not vote, attempt to influence or otherwise participate in any transaction, potential contracts, proposals, discussions, etc. between GMC and MBBOE that could positively affect his or GMC's financial interests or result in personal gain.

Regarding the second question, the circumstance may exist which Mr. Brewer, acting on behalf of the MBBOE, could provide a benefit to MBBOE using his technical expertise as a licensed architect. He is free to use that expertise involving contracts with companies other than his own without there being a conflict of interest. However, if Mr. Brewer wishes to provide the same expertise on a contract between MBBOE and GMC while representing MBBOE's interest, Mr. Brewer would need to submit that question separately and the Commission will analyze those specific facts rather than hypothetically as a part of this formal opinion and provide Mr. Brewer with informal guidance.

The answer to the third question is yes, the City of Mountain Brook and MBBOE are separate governmental entities. Accordingly, Mr. Brewer may communicate with the City on behalf of GMC on any project or contract involving the City of Mountain Brook and does not use his position as a member of MBBOE to help GMC obtain or retain business with the City. Ala. Code §36-25-5(a).

Further, Mr. Brewer may not share any confidential information he obtains as a member of the Board with GMC that could result in financial gain for himself or GMC or any other person or business. Ala. Code §36-25-8. A copy of any contract entered into between GMC and MBBOE that is paid out of public monies must be filed with the Ethics Commission within ten (10) days after its execution. Ala. Code §36-25-11.

### CONCLUSION

A firm in which a member of a board of education is a shareholder and employee, may contract to provide professional services to that board of education provided the public official does not influence or attempt to influence any contracts between the firm and the board of

education or otherwise use his position on the board for private financial gain – for himself, a family member or a business with which he is associated. Ala. Code §36-25-5(a).

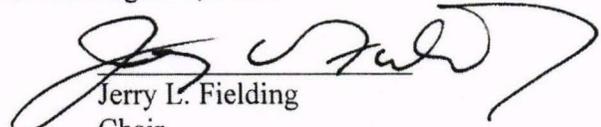
A copy of any contract entered into between a firm in which a member of a board of education is a shareholder and an employee and the board upon which he sits that is paid out of state, county or municipal funds must be filed with the Ethics Commission within ten (10) days after its execution. Ala. Code §36-25-11.

A member of a board of education may fully participate on behalf of his architecture and engineering firm on any project or contract involving the appointing authority for the board on which he sits provided the project or contract does not involve that board and the member does not use his position as a member to help his architecture and engineering firm obtain or retain business with the City. Ala. Code §36-25-5(a).

A member of a board of education may not share any confidential information he obtains as a member of the Board that could result in financial gain for himself, his firm or any other person or business. Ala. Code §36-25-8.

**AUTHORITY**

By 5-0 vote of the Alabama Ethics Commission on August 7, 2019.

  
Jerry L. Fielding  
Chair  
Alabama Ethics Commission