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December 2, 2020

ADVISORY OPINION NO. 2020-06

Ronald Davis
City Attorney
City of Northport
P.O. Box 569
Northport, AL 35476

Conflict of Interest / Mayor and his business presenting materials for consideration and vote to the City Planning and Zoning Commission

A newly elected Mayor and his firm may present materials for consideration and vote to a city's Planning and Zoning Commission provided that the mayor does not supervise the Commission, appoint members to the Commission, or attempt to corruptly influence any action of the Commission.

Dear Mr. Davis:

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:

Bobby Herndon was elected Mayor of the City of Northport on Tuesday, October 6, 2020.

Mr. Herndon owns a land-surveying company in the City of Northport. His company does work in several states, and before he was elected, he did work that was submitted to the city staff for review and to the Northport Planning and Zoning Commission for approval.

When materials are submitted for review and approval by the Planning and Zoning Commission, the submission is first reviewed by Engineering, Planning, Fire, and other departments. The Mayor of Northport does not oversee any of these departments. The administrative head of the City of Northport is the City Manager. The Mayor of Northport does not have oversight over any city department and is not a voting member of the City Council. The Mayor has no authority to hire, fire, promote, or discipline any city employees, including the City Manager.

The Northport Planning and Zoning Commission consists of nine members. The Mayor may appoint eight of the nine members, as vacancies occur. The other member of the Commission is appointed by the City Council. Mayor Herndon has not appointed any of the current members of the Planning and Zoning Commission. There are currently two vacancies on the Planning and Zoning Commission to be filled and one will become vacant at the end of the year. Mayor Herndon has not yet filled any of the vacancies. If his request in this Opinion is approved, he will defer all appointments to the Planning and Zoning Commission to the City Council for the duration of his term as mayor and will abstain from influencing any of those appointments.

QUESTION PRESENTED

May a newly elected Mayor and/or his firm present materials for consideration and vote to the Northport Planning and Zoning Commission, provided the Mayor makes no appointments to the Planning and Zoning Commission?

ANALYSIS

Public officials are prohibited from using their official position for personal gain for themselves, their family members, or any business with which they are associated.[1] In the facts presented, Mayor Herndon does not supervise or have control over the Planning Commission or the City Council. The mayor of Northport typically appoints 8 of the 9 members to the Commission. If the Mayor defers his ability to appoint the Commission members to the City Council, the Ethics Act would not prohibit his presenting materials before the Planning and Zoning Commission. Mayor Herndon would not hold a position of influence over the members of the Planning and Zoning Commission if he does not appoint its members.

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[1] Ala. Code § 36-25-5(a)

Public officials may not use or disclose confidential information gained in the course of or by reason of their position in any way that could result in financial gain for any person or business.[2] Further, no person shall offer to give a public official or employee anything for purpose of corruptly influencing official action, and no public official may solicit or receive anything for the purpose of corruptly influencing official action.[3] Therefore, Mayor Herndon may not use confidential information obtained in his position as mayor for personal gain for himself or anyone else, including his surveying company. He cannot offer, solicit, or receive anything for the purpose of corruptly influencing any official action, including surveying decisions of the Commission.

Public officials may not use or cause to be used equipment, facilities, time, materials, human labor, or other public property under their discretion for the benefit of themselves or anyone else, which would materially affect their financial interest.[4] Consequently, Mayor Herndon may not use any of the property under his discretion and control for any project for his company or for any private interest. If Mayor Herndon or his company is awarded a contract with any agency that is paid in whole or in part with state, county, or municipal funds, Mayor Herndon must file that contract with the Ethics Commission within ten days of its execution. [5]

CONCLUSION

A newly elected Mayor and his firm may present materials for consideration and vote to a city's Planning and Zoning Commission provided that the mayor does not supervise the Commission, appoint members to the Commission, or attempt to corruptly influence any action of the Commission.

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[2] Ala. Code § 36-25-8
[3] Ala. Code § 36-25-7
[4] Ala. Code § 36-25-5(c)
[5] Ala. Code § 36-25-11

AUTHORITY

By 5 - 0 vote of the Alabama Ethics Commission on December 2, 2020.

Beverlye Brady
Chair
Alabama Ethics Commission