



STATE OF ALABAMA ETHICS COMMISSION



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February 3, 2021

ADVISORY OPINION NO. 2021-03

Doug Singleton
Oronde Mitchell
Donald Mims
209 Buckhead Drive
Pike Road, AL 36064

Conflict of Interest / County Commissioner /
Member of City Council / Associated
Business / Thing of Value / Revolving Door

A member of the Montgomery County Commission who is an officer of a nonprofit organization may allocate funding from his discretionary account to the nonprofit organization, directly or indirectly, provided the County Commissioner is not compensated for their service as an officer of the organization, does not otherwise personally benefit from the nonprofit organization, and the allocation is made to serve a public purpose.

A member of the Montgomery City Council who is the vice chair of a nonprofit organization may allocate funding from his discretionary account to the nonprofit organization, directly or indirectly, provided the Council member is not compensated for their service as the vice chair of the organization, does not otherwise personally benefit from the nonprofit organization, and the allocation is made to serve a public purpose.

The “Revolving Door” provisions of the Ethics Act do not prohibit a former County Administrator from becoming a member of a board for which he did not personally participate in the direct regulation, audit, or investigation provided he does not contract back with the County on behalf of the nonprofit organization or represent the organization before the County for a period of two years after he left his position as County Administrator.

Dear Mr. Singleton:

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:

A group of local leaders in the Montgomery area are forming an organization called Mentors of Montgomery (MOM) to address the number of homicides in the Montgomery area by mentoring at-risk youth, including those in detention facilities, gangs, and environments that foster violent activities. MOM will register with the Secretary of State but will not incorporate as a 501(c)3. The Central Alabama Community Foundation (CACF) will be the entity that will receive donations and gifts to support MOM. A program director will oversee the leaders of MOM that will operate meetings for mentors and mentees throughout the City. The program leader will be compensated by CACF. CACF will also administer payments for all expenses related to MOM.

Mr. Singleton is a member of the Montgomery County Commission and an officer of MOM. Mr. Singleton and his family members do not receive and will not receive any compensation from either CACF or MOM and does not otherwise obtain personal gain from either organization.

Mr. Oronde Mitchell is a member of the Montgomery City Council and the vice chair of MOM. Mr. Mitchell and his family members also do not receive and will not receive any compensation from either CACF or MOM and does not otherwise obtain personal gain from either organization.

Mr. Donnie Mims is a retired County Administrator for Montgomery County and an officer of MOM. Mr. Mims retired from the County less than two years ago.

QUESTIONS PRESENTED

1. Whether a County Commissioner and officer of Mentors of Montgomery may allocate funding from their discretionary account to the Central Alabama Community Foundation with the knowledge that the funding would be used to support Mentors of Montgomery.
2. Whether a City Council member for the City of Montgomery and vice chair of Mentors of Montgomery may allocate funding from their discretionary account to the Central Alabama Community Foundation with the knowledge that the funding would be used to support Mentors of Montgomery.
3. Whether the Ethics Act prohibits a retired County Administrator from serving as a Board member for Mentors of Montgomery within two years after the end of his employment with the County.

ANALYSIS

Both the County Commissioner and City Council member are “public officials” as defined by the Ethics Act.¹ Public officials and employees may not use their official position for personal gain for themselves, their family members, or any business with which they are associated.² A County Commissioner is also prohibited from voting or participating in any matter in which the

¹ Ala. Code § 36-25-1(27): PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-13-40.

² Ala. Code § 36-25-5(a): No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.

Ala. Code § 36-25-1(2): BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business.

Commissioner or their family member has a financial interest.³

The Ethics Act prohibits a city council member or county commissioner from directing discretionary expenditures which provide personal gain to themselves, a family member, their private sector employer, or to the private sector employer of a family member. It also prohibits them from using their influence over other city council members or county commissioners to have them direct funding to such individuals or businesses.

Nonprofits on whose boards a public official or employee sits are businesses with which they are associated.

[I]f a public employee or official, or their family, is employed by a nonprofit, or paid for board service, then they may not use their public position to direct money to that entity because in doing so they would be benefitting a ‘business’ they are associated with in violation of the Act. In such a situation, the Council member must abstain from voting and cannot influence the vote or the allocation. Otherwise, they may.⁴

MOM and CACF are considered businesses under the Ethics Act.⁵ Mr. Singleton is an officer of MOM, and Mr. Mitchell is the vice chair of MOM. Therefore, MOM is a business with which they are both associated. Since neither Mr. Singleton, Mr. Mitchell, nor any of their family members are compensated by MOM or CACF, they may allocate money from their discretionary funds either directly to MOM or indirectly to CACF.

The “Revolving Door” provisions of the Ethics Act restrict certain public employees and officials from engaging in certain activities for a period of two years after the end of their term or employment. As County Administrator, Mr. Mims did not “personally participate in the direct regulation, audit, or investigation” of MOM.⁶ Therefore, the “Revolving Door” provisions would not prohibit Mr. Mims from becoming a board member for MOM provided he does not solicit or negotiate a contract with the County on behalf of MOM or represent MOM before the County for a period of two years after he left his position as County Administrator.⁷

³ Ala. Code § 36-25-9(c): No member of any county or municipal agency, board, or commission shall vote or participate in any matter in which the member or family member of the member has any financial gain or interest.

⁴ Ethics Advisory Opinion No. 2016-33

⁵ Ala. Code § 36-25-1(1): BUSINESS. Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity.

⁶ Ala. Code § 36-25-13(f): No public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business, corporation, partnership, or individual shall within two years of his or her departure from such employment solicit or accept employment with such private business, corporation, partnership, or individual.

⁷ See Ala. Code § 36-25-13(c): No public employee shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, or department, of which he or she is a former

CONCLUSION

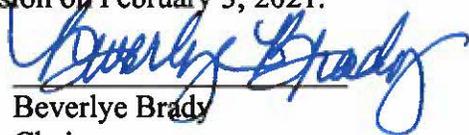
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The “Revolving Door” provisions of the Ethics Act do not prohibit a former County Administrator from becoming a member of a board of which he did not personally participate in the direct regulation, audit, or investigation provided he does not solicit or negotiate a contract with the County on behalf of the nonprofit organization or represent the organization before the County for a period of two years after he left his position as County Administrator.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on February 3, 2021.



Beverly Brady
Chair
Alabama Ethics Commission

employee or worked pursuant to an arrangement such as a consulting agreement, agency transfer, loan, or similar agreement for a period of two years after he or she leaves such employment or working arrangement. For the purposes of this subsection, such prohibition shall not include a former employee of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

See Ala. Code § 36-25-13(d): Except as specifically set out in this section, no public official, director, assistant director, department or division chief, purchasing or procurement agent having the authority to make purchases, or any person who participates in the negotiation or approval of contracts, grants, or awards or any person who negotiates or approves contracts, grants, or awards shall enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which the person was a member or employee for a period of two years after he or she leaves the membership or employment of such governmental agency....