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STATE OF ALABAMA
ETHICS COMMISSION

MAILING ADDRESS

P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS

RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104



James L. Sumner, Jr.
Director

Hugh R. Evans, III
Assistant Director
General Counsel

TELEPHONE (334) 242-2997
FAX (334) 242-0248
WEB SITE www.ethics.alalinc.net

February 2, 2000

ADVISORY OPINION NO. 2000-10

David A. Harrell
Examiner II
Department of Examiners of Public Accounts
Rt. 10, Box 473
Andalusia, Alabama 36420

**Conflict Of Interests/Examiner II With The
Department Of Examiners Of Public
Accounts Running For Town Council.**

An Examiner II with the Department of Examiners of Public Accounts may run for a seat on the Town Council for the Town of Gantt, Alabama; provided, that all activities relating to his campaign or his service, if elected, be conducted on his own time, whether after-hours, annual leave, etc.; that there be no use of state equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in conducting his campaign or in performing the functions of the office if elected; that the Examiner II not be involved in any audits conducted by the Examiners of Public Accounts of the Town of Gantt; and further, should the Examiners of Public Accounts conduct an audit on the Town of Gantt, the Examiner II, who sits on the

Council, may not use any confidential information obtained in the course of his service as a Town Councilman, to assist the Examiners in conducting the audit, nor may he use confidential information obtained in the course of his employment as an Examiner II to assist the Town in responding to the audit.

As election laws are involved, it is suggested that the requestor of this opinion contact the Attorney General's Office for an opinion.

Dear Mr. Harrell:

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.

QUESTION PRESENTED

May an Examiner II with the Department of Examiners of Public Accounts run for a seat on the Town Council for the Town of Gantt, Alabama?

FACTS AND ANALYSIS

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

David A. Harrell is a resident of Gantt, Alabama and has been asked about serving on the Town Council. Mr. Harrell is employed as an Examiner II with the Department of Examiners of Public Accounts. The Examiners audit state and county agencies by law and they audit municipalities based upon proper authorization.

Mr. Harrell states that the Policies and Procedures for the Department of Examiners of Public Accounts states, in part, under Section IX - Independence: "It is the policy of the Department that audit personnel be free from personal and external impairments to independence and maintain an independent mental attitude and appearance of independence at all times." This section also states: "Independence shall be considered when assigning staff to audits. An

employee shall not be assigned to audit an agency when the employee's independence is impaired with respect to that agency."

Mr. Harrell has previously reported to the Examiners of Public Accounts that he has an independence impairment with the Town of Gantt, as a result of his personal relationships with municipal officials.

Mr. Harrell has requested an opinion of the Commission on this issue.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(23) defines a public employee as:

"(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

Section 36-25-1(24) defines a public official as:

"(24) 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 17-16-2."

Section 36-25-1(8) defines a conflict of interest as:

"(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. 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.”

Section 36-25-2(b) states in pertinent part:

“(b) 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.”

Section 36-25-5(a) states:

“(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.”

Section 36-25-5(c) states:

“(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy.”

Section 36-25-8 states:

“No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public

employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business."

Based on the facts as provided and the above law, an Examiner II with the Department of Examiners of Public Accounts may run, and if elected, may serve on the Town Council for the Town of Gantt; provided:

- 1) That all activities relating to his campaign or his service, if elected, be conducted on his own time, whether after-hours, annual leave, etc.;
- 2) That there be no use of state equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in conducting his campaign or in performing the functions of the office if elected;
- 3) That the Examiner II not be involved in any audits conducted by the Examiners of Public Accounts of the Town of Gantt;
- 4) That should the Examiners of Public Accounts conduct an audit on the Town of Gantt, the Examiner II, who sits on the Council, not use any confidential information obtained in the course of his service as a Town Councilman, to assist the Examiners in conducting the audit; and,
- 5) That he not use confidential information obtained in the course of his employment as an Examiner II to assist the Town in responding to the audit.

Further, as election laws are involved, it is suggested that the requestor of this opinion contact the Attorney General's Office for an opinion.

CONCLUSION

An Examiner II with the Department of Examiners of Public Accounts may run for a seat on the Town Council for the Town of Gantt, Alabama; provided, that all activities relating to his campaign or his service, if elected, be conducted on his own time, whether after-hours, annual leave, etc.; that there be no use of state equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in conducting his campaign or in performing the functions of the office if elected; that the Examiner II not be involved in any audits conducted by the Examiners of Public Accounts of the Town of Gantt; and further, should the Examiners of Public Accounts conduct an audit on the Town of Gantt, the Examiner II, who

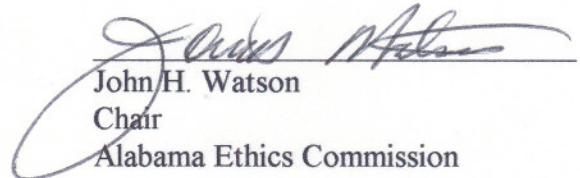
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sits on the Council, may not use any confidential information obtained in the course of his service as a Town Councilman, to assist the Examiners in conducting the audit, nor may he use confidential information obtained in the course of his employment as an Examiner II to assist the Town in responding to the audit.

As election laws are involved, it is suggested that the requestor of this opinion contact the Attorney General's Office for an opinion.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on February 2, 2000.


John H. Watson
Chair
Alabama Ethics Commission