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Lewis G. Odom, Jr., Esq., Vice-Chairman
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J. Harold Sorrells
Raymond L. Bell, Jr., Esq.

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

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

October 4, 2000

ADVISORY OPINION NO. 2000-55

The Honorable Ed Rainey
City Councilman
City of Monroeville
102 Fox Run
Monroeville, Alabama 36460

**Conflict Of Interests/Business Owned By
Sons Of City Council Member Doing
Business With The City.**

A business owned by the sons of a member of the Monroeville City Council may do business with the City of Monroeville; provided, that the Council Member not vote, attempt to influence or otherwise participate in any negotiations, contracts or other dealings between the City and the business owned by his sons.

In addition, the member of the City Council may not discuss or interface with employees of the City of Monroeville regarding any business dealings between his sons' business and the City, or projects on which his sons' business may submit a bid.

A member of the Monroeville City Council may not use confidential information obtained in the course of his service on the Monroeville City Council that would provide a benefit to his sons' construction business or otherwise enable them to obtain City business.

Dear Mr. Rainey:

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 a construction company formerly owned by a member of the Monroeville City Council and currently owned by his sons, continue to do business with the City of Monroeville?

FACTS AND ANALYSIS

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

Ed Rainey was recently elected to the Monroeville City Council. Until December 31, 1999, he was the owner of a construction company. At that time, he sold the company to his two sons and receives no further compensation from the company.

In his request for an opinion, he sets out several scenarios. They are as follows:

- 1) Regular projects below bid law
 - A. Two or more local contractors equally qualified and having necessary equipment available.
 - B. One contractor is more qualified and experienced with that type of project.
 - C. Only one contractor has the necessary equipment available to do job.
 - D. One local contractor has consistently lower prices.
- 2) Emergency projects, i.e., broken sewer line spilling raw sewerage into stream.
 - A. Two or more local contractors equally qualified and having necessary equipment available.
 - B. One contractor is more qualified and experienced with type of project.

- C. Only one contractor has necessary equipment available to complete job.
- D. One contractor has consistently lower prices.

The Alabama Ethics Law, Code of Alabama, 1975, 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(12) defines a family member of the public official as:

"(12) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official."

Section 36-25-1(2) defines a business with which the person is associated as:

"(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."

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 36-25-1(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 36-25-8 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."

Section 36-25-9(c) states:

"(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."

All the hypothetical situations provided by Councilman Rainey may be answered together.

The Alabama Ethics Law prohibits a public official or a public employee from using his or her position in a manner that would provide a personal gain to either themselves, a family member or a business with which he or she is associated.

In the facts as provided, Councilman Rainey is a public official; therefore, his sons, even though adult, non-dependents, are family members as defined by the Alabama Ethics Law.

While the construction company owned by his sons may do business with the City of Monroeville, Councilman Rainey may not vote, attempt to influence or otherwise participate in any matter that involves his sons' business and their dealings with the City of Monroeville.

In addition, Councilman Rainey may not use his position in an effort to see that his sons obtain City business. He should totally remove himself from any dealings or potential dealings between his sons' company and the City of Monroeville. This would include, but not be limited to, his not having discussions with other members of the Council, City employees and/or department heads regarding matters involving his sons' business or projects on which his sons' business may wish to bid.

Based on the above law and the facts as provided, a business owned by the sons of a member of the Monroeville City Council may do business with the City of Monroeville, provided,

- 1) that the Council Member not vote, attempt to influence or otherwise participate in any negotiations, contracts or other dealings between the City and the business owned by his sons;
- 2) that the Council Member not discuss or interface with employees of the City of Monroeville regarding any business dealings between his sons' business and the City, or projects on which his sons' business may submit a bid; and,
- 3) that he not use confidential information obtained in the course of his service on the Monroeville City Council that would provide a benefit to his sons' construction business or otherwise enable them to obtain City business.

CONCLUSION

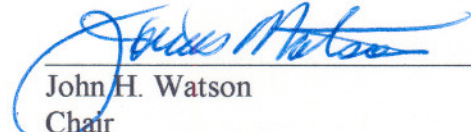
A business owned by the sons of a member of the Monroeville City Council may do business with the City of Monroeville; provided, that the Council Member not vote, attempt to influence or otherwise participate in any negotiations, contracts or other dealings between the City and the business owned by his sons.

In addition, the member of the City Council may not discuss or interface with employees of the City of Monroeville regarding any business dealings between his sons' business and the City, or projects on which his sons' business may submit a bid.

A member of the Monroeville City Council may not use confidential information obtained in the course of his service on the Monroeville City Council that would provide a benefit to his sons' construction business or otherwise enable them to obtain City business.

AUTHORITY

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



John H. Watson
Chair
Alabama Ethics Commission