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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

January 10, 2001

ADVISORY OPINION NO. 2001-02

Cledell Stiefel
President
Fort Payne Improvement Authority
P.O. Box 680617
Fort Payne, Alabama 35968-0617

Applicability Of Ethics Law/Members And Employees Of Fort Payne Improvement Authority Being Subject To The Alabama Ethics Law.

Board members, trustees, and employees of the Fort Payne Improvement Authority are subject to the provisions of the Alabama Ethics Law, as the Improvement Authority is a governmental corporation and/or authority established for the purpose of carrying out a specific governmental function.

Board members, trustees, and employees of the Fort Payne Improvement Authority are required to file Statements of Economic Interests on an annual basis if they are compensated in the amount of \$50,000 or more per year for their service on the Improvement Authority. Likewise, employees who fall within the list of categories set out in Section 36-25-14, are required to file Statements of Economic Interests with the Ethics Commission.

Dear Mr. Stiefel:

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.

QUESTIONS PRESENTED

- 1) Are board members, trustees, and employees of the Fort Payne Improvement Authority subject to the Alabama Ethics Law?
- 2) If the board members, trustees, and employees are subject to the Alabama Ethics Law, are they required to file Statements of Economic Interests with the Ethics Commission?

FACTS AND ANALYSIS

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

Cledell Stiefel is the President of the Board of Directors for the Fort Payne Improvement Authority (FPIA). The FPIA is a public corporation organized pursuant to the authority of Chapter 7 of Title 39 of the Code of Alabama, 1975, as amended. The Improvement Authority provides municipal electric power to all but a handful of residents in the City of Fort Payne, who are served by a rural electric cooperative in an area which was annexed into the City several years ago and also serves a large area outside the City, but within the City's police jurisdiction, and some customers outside the City's police jurisdiction in a territory which was purchased from Sand Mountain Electric Cooperative several years ago.

The Improvement Authority is governed by a five member board of trustees appointed by the Mayor and the City Council of the City of Fort Payne.

The Authority purchases all of its electric power from the Tennessee Valley Authority, and the sale of electric power to residential, commercial, agricultural, and industrial customers represents almost all the income of the Authority. Some income is generated from a rental fee charged to other utilities such as BellSouth and the local t.v. cable company, and other miscellaneous income is earned on various accounts as well as fees generated by the Improvement Authority for collecting solid waste and sewer fees for the City of Fort Payne.

Mr. Stiefel states that a question has arisen as to whether or not the Improvement Authority and its employees are governed by the Code of Ethics.

Mr. Stiefel points out Section 36-25-1(13), relating to governmental corporations and authorities. He states that this definition appears to include the Improvement Authority; however, it is felt by some individuals that employees of the Improvement Authority are not covered by the Ethics Law, in that, they are not paid in whole or in part from state, county, or municipal funds, since their salaries are almost totally paid from revenues generated from the resale of electric power.

Mr. Stiefel states that, accordingly, employees of the Improvement Authority have not been filing Statements of Economic Interests as required by law.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(13) defines governmental corporations and authorities as:

“(13) GOVERNMENTAL CORPORATIONS AND AUTHORITIES. Public or private corporations and authorities, including but not limited to, hospitals or other health care corporations, established pursuant to state law by state, county or municipal governments for the purpose of carrying out a specific governmental function. Notwithstanding the foregoing, all employees, including contract employees, of hospitals or other health care corporations and authorities are exempt from the provisions of this chapter.”

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 36-25-2(c) in pertinent part states:

“This chapter shall be liberally construed to promote complete disclosure of all relevant information and to insure that the public interest is fully protected.”

Sections 36-25-14(a)(2) & (4) state:

“(a) A statement of economic interests shall be completed and filed in accordance with this chapter with the commission no later than April 30 of each year covering the period of the preceding calendar year by each of the following:

(2) Any person appointed as a public official and any person employed as a public employee at the state, county, or municipal level of government or their instrumentalities who occupies a position whose base pay is fifty thousand dollars (\$50,000) or more annually.

(4) Members of the Alabama Ethics Commission; appointed members of boards and commissions having statewide jurisdiction (but excluding members of solely advisory boards).”

While Section 36-25-14(a)(4) requires appointed members of boards and commissions to file Statements of Economic Interests, it does not mention authorities.

However, Section 36-25-1(13) includes authorities under the definition of governmental corporations and authorities. Therefore, it is the Commission’s opinion that, whether an entity is called a board, a commission, or an authority, etc., the provisions of the Alabama Ethics Law are applicable, if the other tests are met.

The Fort Payne Improvement Authority is organized under Title 39, Chapter 7 of the Code of Alabama, 1975. Section 39-7-13(a) in pertinent part states that:

“ . . . Every authority incorporated under this chapter is hereby vested with all powers necessary and requisite for the accomplishment of such purpose for which

such authority is incorporated capable of being delegated by the legislature of the State of Alabama . . .”

In addition, Section 39-7-14 states that the board of trustees of the Authority shall be appointed by the governing body of the city or town, or the governing body of the county, whichever area is being served.

In addition, this section requires that the governor shall make those appointments in unincorporated areas. This section also states that:

“All vacancies on the board shall be filled by the proper authority designated in this section . . .”

As relates to the Fort Payne Improvement Authority, the Improvement Authority is a governmental corporation or authority subject to the Alabama Ethics Law, and even though its employees are not directly paid in whole or in part out of state, county, or municipal funds, they are serving a governmental purpose and fall under the umbrella of the City of Fort Payne.

Therefore, board members, trustees, and employees of the Fort Payne Improvement Authority are subject to the Alabama Ethics Law.

As relates to the filing of Statements of Economic Interests, as the Fort Payne Improvement Authority does not have statewide jurisdiction, the board members and trustees are not required to file Statements of Economic Interests unless they are compensated in the amount of \$50,000 or more per year for their service on the Improvement Authority.

As relates to employees, those employees who are compensated in the amount of \$50,000 or more per year, or who fall within the following categories, must file Statements of Economic Interests with the Commission.

Those categories are as follows:

Sections 36-25-14(a)(2) & (5) - (22):

“(a) A statement of economic interests shall be completed and filed in accordance with this chapter with the commission no later than April 30 of each year covering the period of the preceding calendar year by each of the following:

- (2) Any person appointed as a public official and any person employed as a public employee at the state, county, or municipal level of government or their instrumentalities who occupies a position whose base pay is fifty thousand dollars (\$50,000) or more annually.
- (5) All full-time nonmerit employees, other than those employed in maintenance, clerical, secretarial, or other similar positions.
- (6) Chief clerks and chief managers.
- (7) Chief county clerks and chief county managers.
- (8) Chief administrators.
- (9) Chief county administrators.
- (10) Any public official or public employee whose primary duty is to invest public funds.
- (11) Chief administrative officers of any political subdivision.
- (12) Chief and assistant county building inspectors.
- (13) Any county or municipal administrator with power to grant or deny land development permits.
- (14) Chief municipal clerks.
- (15) Chiefs of police.
- (16) Fire chiefs.
- (17) City and county school superintendents and school board members.
- (18) City and county school principals or administrators.
- (19) Purchasing or procurement agents having the authority to make any purchase.
- (20) Directors and assistant directors of state agencies.

(21) Chief financial and accounting directors.

(22) Chief grant coordinators.”

Based on the facts as provided and the above law, board members, trustees, and employees of the Fort Payne Improvement Authority are subject to the Alabama Ethics Law and must file Statements of Economic Interests with the Ethics Commission, as indicated within this opinion.

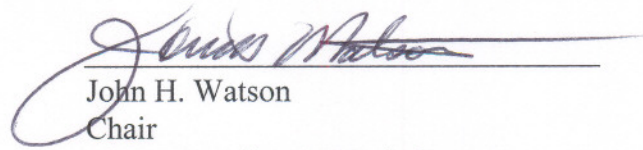
CONCLUSION

Board members, trustees, and employees of the Fort Payne Improvement Authority are subject to the provisions of the Alabama Ethics Law, as the Improvement Authority is a governmental corporation and/or authority established for the purpose of carrying out a specific governmental function.

Board members, trustees, and employees of the Fort Payne Improvement Authority are required to file Statements of Economic Interests on an annual basis if they are compensated in the amount of \$50,000 or more per year for their service on the Improvement Authority. Likewise, employees who fall within the list of categories set out in Section 36-25-14, are required to file Statements of Economic Interests with the Ethics Commission.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on January 10, 2001.



John H. Watson
Chair
Alabama Ethics Commission