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March 7, 2001

ADVISORY OPINION NO. 2001-12

The Honorable Donald E. Hall
Councilman, Place 5
2109 Springdale Drive SW
Hartselle, Alabama 35640

Conflict Of Interests/City Council Member
Actively Promoting Development Of
Property When Son Is Potential Heir Of One
Of The Landowners.

A member of the Hartselle City Council may take an active role in promoting the development of and acting on financial decisions to provide infrastructure to an area vital to the City's economic future, when his son is a potential heir of one of the landowners in that area, as the son of the Council member will not receive a direct benefit or a benefit any different than that received by the other landowners in the area.

Dear Councilman Hall:

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

Can a Council member take an active roll in promoting the development, and acting on financial decisions to provide infrastructure to an area that the community feels is vital to its economic future, when his son is a potential heir to one of the landowners in that area?

FACTS AND ANALYSIS

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

Donald E. Hall is a member of the Hartselle City Council. The City of Hartselle is interested in economic development to promote the development of the I-65 corridor, one-half mile wide on either side, from Priceville to Falkville, which is a distance of about 12 miles. The specific facts set out by Councilman Hall are as follows:

Mr. B. N. Russell owns jointly with one of his five children, Laura, a fifty (50) acre track of land in the development area. Another one of his daughters is Julia R. Hall. Mr. Russell has three other children. Julia and Councilman Hall have one son, Benjamin. They have been divorced for ten years. Mr. Russell has six other grandchildren.

The City of Hartselle has formed an ad hoc committee to study the economic potential of the area along Interstate 65 between, and including, the cities of Falkville to its south and Priceville to its north. This committee has contracted with the RM Planning Group out of Nashville, Tennessee, a consulting firm, to assist in this project.

At some point, sewer, other utility services, and road improvement are going to be required to support the industrial or retail/service businesses that the community hopes it will attract. The utility services are to be provided by the Hartselle Utilities Board, which is a separate autonomous board from the City Council. However, because the City will have the greatest benefit from the tax revenue generated from this corridor, the Utilities Board is requiring that the City contribute to the cost of sewer installation. Any road improvement will fall upon the City, hopefully, with the assistance of other levels of government.

The main sewer truck lines will be installed to service the general area. It will then be up to the individual property owners to make their own arrangements to service their individual properties.

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(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 36-25-9(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."

In September of 1985, the Supreme Court of Alabama, when asked whether legislators, who are employed and paid by the public education system, or whose spouses are so employed and paid, could constitutionally vote on a bill granting a pay raise for employees of the public education system.

The justices opined that:

"Legislators employed and paid by the public education system or those whose spouses were so employed and paid could constitutionally vote on the bill

granting a pay raise for public education system employees, so long as the bill did not affect any such legislator in a way different from the way it affected the other members of the class to which he belonged." OPINION OF THE JUSTICES NO. 317, 474 So.2d. 700.

Councilman Hall has provided the Commission with maps of the area involved. The property for which his son is a potential heir is a very small portion of the overall property.

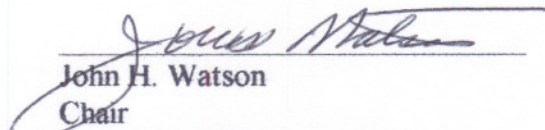
Based on the facts as provided and the above law, a member of the Hartselle City Council may take an active role in promoting the development of and acting on financial decisions to provide infrastructure to an area vital to the City's economic future, when his son is a potential heir of one of the landowners in that area, as the son of the Council member will not receive a direct benefit or a benefit any different than that received by the other landowners in the area.

CONCLUSION

A member of the Hartselle City Council may take an active role in promoting the development of and acting on financial decisions to provide infrastructure to an area vital to the City's economic future, when his son is a potential heir of one of the landowners in that area, as the son of the Council member will not receive a direct benefit or a benefit any different than that received by the other landowners in the area.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on March 7, 2001.


John H. Watson
Chair

Alabama Ethics Commission