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March 7, 2001

ADVISORY OPINION NO. 2001-20

The Honorable Thomas S. Chappell
Councilman, Place One
1104 Beverly Street, NE
Hartselle, Alabama 35640

Conflict Of Interests/City Council Member
Actively Promoting Development Of
Property When Father-In-Law Is 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 father-in-law is one of the landowners in that area, as the father-in-law of the Council member will not receive a benefit any different than that received by the other landowners in the area.

Dear Councilman Chappell:

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 utility infrastructure to an area that the community feels is vital to its economic future, when his father-in-law is one of the landowners in that area?

FACTS AND ANALYSIS

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

Thomas S. Chappell is a member of the Hartselle City Council and has requested this opinion, as the answer will dictate his involvement in the economic growth of the City of Hartselle, Alabama.

The City of Hartselle has formed an ad hoc committee to study the economic potential from the development of an area along Interstate 65, stretching from Priceville south to Falkville. This corridor being studied is approximately 10 miles in length and extends ½ mile to the east and ½ mile to the west of the Interstate. The committee has contracted with The RM Planning Group, from Nashville, to assist in this study and develop a master plan for the growth and development of the area.

At some point during the development of this corridor, sewer, other utility services, and road improvements will be required in some areas to support the industrial and/or retail/service businesses that the City hopes it will attract. Hartselle Utilities will provide the sewer and other utility services. The utility company is governed by a board, which is appointed by the City Council. Other than the board appointments, the City Council has no governing power over the utility company or board. The City of Hartselle will reap most of the benefits of additional sales tax revenue that will be generated; therefore, Hartselle Utilities is depending on the City to make a significant contribution towards the cost of sewer installation. Any road improvements will also be the City's responsibility.

Hartselle Utilities is considering the adoption of an interim plan to develop a portion of the Interstate 65 corridor that is currently undeveloped. The interim plan would allow for quicker development with less initial capital outlay than the current master sewer plan. The interim plan calls for installation of main sewer trunk lines to general areas of the entire drainage basin. It will then be the responsibility of individual property owners to provide connecting lines to and from their property.

Mr. B. N. Russell of Hartselle, Alabama, has five children. Councilman Chappell is married to the fourth child, Jennifer Russell Chappell. Councilman Chappell is employed at Russell Forest Products, which is owned by the fifth child, Kelly Curtis Russell. Mr. B. N. Russell owns 50 acres in the proposed development area with his second child, Laura Russell Kellogg and her husband, Terry Kellogg, each owning a one-third interest.

Councilman Chappell's hope is that when the Ethics Commission considers this question, they will see that this issue is much bigger than the development of 50 acres owned by his father-in-law. It is about the development of over 10,000 acres, which is only a small portion of the Interstate 65 corridor that the City of Hartselle is hoping to see developed.

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.

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 father-in-law is one of the landowners in that area, as the father-in-law of the Council member will not receive a benefit any different than that received by the other landowners in the area.

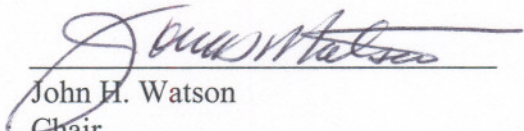
CONCLUSION

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 father-in-law is one of the landowners in that area, as the father-in-law of the Council member will not receive a benefit any different than that received by the other landowners in the area.

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AUTHORITY

By 4-1 vote of the Alabama Ethics Commission on March 7, 2001.


John H. Watson
Chair
Alabama Ethics Commission