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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

May 2, 2001

ADVISORY OPINION NO. 2001-30

The Honorable Marion M. Evans
City Council Member/Counselor
City Board of Education
7000 Grasselli Road
Fairfield, Alabama 35064

**Conflict Of Interests/Member Of City
Council Employed By City Board Of
Education Voting On Appointment Of
School Board Member.**

**A member of the City of Fairfield City
Council, who is employed as a counselor
with the City of Fairfield Board of
Education, may not vote on, attempt to
influence, or otherwise participate in the
appointment of members to the City of
Fairfield Board of Education, as he would, in
effect, be appointing his superiors.**

Dear Councilman Evans:

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 member of the City of Fairfield City Council, who is employed as a counselor with the City of Fairfield Board of Education, vote on appointments to the City Board of Education?

FACTS AND ANALYSIS

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

Marion M. Evans is a member of the City of Fairfield City Council. He is also employed as a counselor with the City of Fairfield Board of Education.

Councilman Evans states that the City Council appoints members to the City Board of Education.

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(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 36-25-5(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 36-25-9(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."

This issue has been addressed several times in the past by the Ethics Commission.

On November 20, 1996, the Commission rendered Advisory Opinion No. 96-115, which held in pertinent part that:

"A City Councilman, who is employed by the Fort Payne Improvement Authority, may not vote on, attempt to influence, or otherwise participate in the appointment of his superiors to the Improvement Authority . . ."

On October 30, 1996, the Commission rendered Advisory Opinion No. 96-103, which held in pertinent part that:

"A member of the Auburn City Council may seek employment with the Auburn City School System; provided, . . . that he not vote, attempt to influence, or otherwise participate in any matters relating to appointments to the School Board . . ."

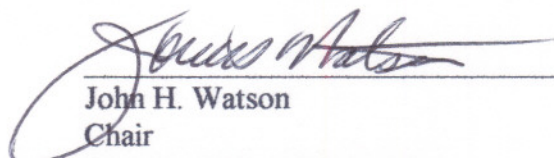
Based on the facts as provided and the above law, a member of the City of Fairfield City Council, who is employed as a counselor with the City of Fairfield Board of Education, may not vote on, attempt to influence, or otherwise participate in the appointment of members to the City of Fairfield Board of Education, as he would, in effect, be appointing his superiors.

CONCLUSION

A member of the City of Fairfield City Council, who is employed as a counselor with the City of Fairfield Board of Education, may not vote on, attempt to influence, or otherwise participate in the appointment of members to the City of Fairfield Board of Education, as he would, in effect, be appointing his superiors.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on May 2, 2001.



John H. Watson
Chair
Alabama Ethics Commission