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September 5, 2001

ADVISORY OPINION NO. 2001-40

Mr. Steve F. Sayler
Finance Director
Jefferson County Commission
Finance Department
Suite 810 Courthouse
716 Richard Arrington, Jr. Blvd. N.
Birmingham, Alabama 35203

Conflict Of Interests/County Finance
Director Providing Consulting Services To
Entity Owned By Individual Formerly
Employed By Bank Underwriting Jefferson
County Debt Issues.

The Finance Director for the Jefferson
County Commission may provide consulting
services to an entity owned by an individual
formerly affiliated with The Bank and The
Bank of Alabama, which had been
underwriters of Jefferson County debt issues
in the past, when the Finance Director had
no dealings with the individual affiliated
with the bank during the debt issues with
that individual's private company.

The Finance Director for the Jefferson
County Commission may provide consulting
services to an entity owned by an individual
formerly affiliated with The Bank and the
Bank of Alabama; provided, that all work
done in conjunction with the consulting
services is done on his own time, whether

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it is after hours, annual leave, etc.; that there is no use of any county equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in performing the consulting services; that there is no use of any confidential information obtained in the course of his employment as Finance Director for the Jefferson County Commission to assist him in performing or obtaining the consulting opportunities; and that he not have business dealings on behalf of Municorp with Jefferson County.

The Finance Director for the Jefferson County Commission may not provide consulting services on behalf of Municorp to entities that otherwise do business with the Jefferson County Commission.

The Finance Director for the Jefferson County Commission may not provide consulting services on behalf of Municorp when Municorp's client is a law firm, bank, etc., which potentially may have business dealings with Jefferson County.

Dear Mr. Sayler:

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 the Finance Director for the Jefferson County Commission provide consulting services to an entity owned by an individual who was formerly employed with a bank that handled several debt issues for the Jefferson County Commission?

FACTS AND ANALYSIS

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

Steve F. Sayler is the Finance Director for the Jefferson County Commission. Subject to an Advisory Opinion, the President of the County Commission has agreed to allow Mr. Sayler to pursue professional service consulting opportunities outside of his employment with the County.

The opportunity involves Municorp Funding, a limited liability corporation which provides financial advisory services to its clients. The services include bond issue structuring, pricing, document review; derivative structuring and pricing, investment analysis; financial system operations, both manual and computerized; and other similarly related financial services. The clients for these services will be cities, states, and counties, excluding Jefferson County.

The only employee of Municorp Funding is its owner, who previously worked for The Bank and the Bank of Alabama. These banks have been underwriters of Jefferson County debt issues in the past. While employed by these banks, this individual solicited orders from investors to purchase the Jefferson County debt issues.

Mr. Sayler states that he does not have a vote in deciding who the Commission uses for financial services, nor did he have any dealings with this individual on the debt issues.

Mr. Sayler states that it is probable that he will perform consulting services to municipal entities for, with, and against financial companies and firms hired by the Jefferson County Commission in the past and in the future. He states that these companies and firms include underwriters, investment banks, bond trustees, lawyers, accountants, consultants, and other types of financial entities.

Mr. Sayler's compensation will come from Municorp Funding, while Municorp Funding will be compensated by the various involved entities.

The Alabama Ethics Law, Code of Alabama, 1975, 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(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 36-25-2(b) in pertinent part states:

"(b) An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided."

Section 36-25-5(c) states:

"(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as

defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy."

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."

During conversations with the staff and before the Commission in June, Mr. Sayler has indicated that it is possible that Municorp will be hired by a law firm or a bank rather than being hired by the public entity. However, he has given no specifics or examples of when and how this may occur.

Mr. Sayler has also acknowledged that, from time to time, when Jefferson County is hiring a bank, a financial institution, or a law firm, he may be asked his thoughts or opinion on that entity. It is the opinion of the Commission that this would amount, for all practical purposes, to a recommendation.

Therefore, should Mr. Sayler, on behalf of Municorp, be in a contractual relationship with an entity that is seeking to do business with Jefferson County, Mr. Sayler's opinion may be asked, and it would place him in the awkward position of expressing his opinion as Finance Director on an entity with which he has an outside business relationship, and he clearly may not have both.

Based on the facts as provided and the above law, the Finance Director for the Jefferson County Commission may provide consulting services to an entity owned by an individual formerly affiliated with The Bank and the Bank of Alabama, which had been underwriters of Jefferson County debt issues in the past, as he had no dealings with the individual affiliated with the bank during the debt issues or with Municorp; provided,

- 1) that all work done in conjunction with the consulting services is done on his own time, whether it is after hours, annual leave, etc.;
- 2) that there is no use of any county equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in performing the consulting services;

- 3) that there is no use of any confidential information obtained in the course of his employment as Finance Director for the Jefferson County Commission to assist him in performing or obtaining the consulting opportunities;
- 4) that he not have business dealings on behalf of Municorp with Jefferson County;
- 5) that he not provide consulting services on behalf of Municorp to entities that otherwise do business with the Jefferson County Commission; and,
- 6) that he not provide consulting services on behalf of Municorp when Municorp's client is a law firm, bank, etc., which potentially may have business dealings with Jefferson County.

CONCLUSION

The Finance Director for the Jefferson County Commission may provide consulting services to an entity owned by an individual formerly affiliated with The Bank and the Bank of Alabama, which had been underwriters of Jefferson County debt issues in the past, when the Finance Director had no dealings with the individual affiliated with the bank during the debt issues with that individual's private company.

The Finance Director for the Jefferson County Commission may provide consulting services to an entity owned by an individual formerly affiliated with The Bank and the Bank of Alabama; provided, that all work done in conjunction with the consulting services is done on his own time, whether it is after hours, annual leave, etc.; that there is no use of any county equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in performing the consulting services; that there is no use of any confidential information obtained in the course of his employment as Finance Director for the Jefferson County Commission to assist him in performing or obtaining the consulting opportunities; and that he not have business dealings on behalf of Municorp with Jefferson County.

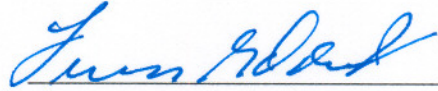
The Finance Director for the Jefferson County Commission may not provide consulting services on behalf of Municorp to entities that otherwise do business with the Jefferson County Commission.

The Finance Director for the Jefferson County Commission may not provide consulting services on behalf of Municorp when Municorp's client is a law firm, bank, etc., which potentially may have business dealings with Jefferson County.

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AUTHORITY

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

A handwritten signature in blue ink, appearing to read "Lewis G. Odom, Jr.", is written over a horizontal line.

Lewis G. Odom, Jr., Esq.
Chair
Alabama Ethics Commission