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January 9, 2002

ADVISORY OPINION NO. 2001-50

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Conflict Of Interest/Board Member
Resigning From Board To Apply For
Position Of Assistant Personnel Director.

The Chairman of the Mobile County Personnel Board may not apply for the vacant position of Assistant Personnel Director, as he has had discussions with the Personnel Director about his interest in the position prior to the vacancy being announced, and where the Personnel Director was directed to take no action on announcing the job vacancy upon motion made by the Chairman.

Conflict Of Interest/Board Member
Resigning From Board To Apply For
Position Of Personnel Director.

The Chairman of the Mobile County Personnel Board may not apply for the position of Personnel Director at the end of the current Personnel Director's contract, as he was involved in the current Personnel Director only being given a one-year contract.

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Dear Mr. Engel:

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 Chairman of the Mobile County Personnel Board resign his position on the Board and apply for the positions of Assistant Personnel Director or Personnel Director?

FACTS AND ANALYSIS

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

Mylan R. Engel is the attorney for the Mobile County Personnel Board. Sydney Raine currently serves as Chairman of the Mobile County Personnel Board. Mr. Raine has an interest in applying for the position of Assistant Personnel Director, a position that is under the Merit System of Mobile County and which is appointed by the Personnel Director. The Personnel Director's Office will shortly be advertising for applicants to fill the position of Assistant Personnel Director.

The Personnel Board is comprised of five individuals, all of whom are appointed by the Mobile County Supervisory Committee and serve staggered terms of five years each. The Personnel Board supervises a full-time Director and some 35 full-time employees, who operate the Personnel Department under the jurisdiction of the Personnel Board. The Board meets monthly and at such other times as the need arises. They receive compensation, which includes a monthly stipend of five hundred dollars (\$500) and fifty dollars (\$50) for each meeting and hearing attended. The Chairman and the Vice Chairman of the Board are elected annually in April of each year and may be reelected to the same position. As Chairman and Vice Chairman, they preside over meetings and have one vote, like all other Board members.

The Personnel Director serves at the pleasure of the Board and is not under civil service, however, the Director is currently employed under a one-year written contract. Mr. Raine desires to apply for the Assistant Personnel Director's position. The Assistant Personnel Director is a merit employee under the classified service and is appointed by the Personnel Director from a list of eligible employees determined from a competitive examination. The Personnel Director reports to and is supervised by the Board and its Chairman.

Mr. Engel states that Mr. Raine is also interested in applying for the position of Personnel Director, should the current Personnel Director's contract not be renewed or should the Personnel Director retire.

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."

The Commission has long held that a member of a public board may resign from his or her position on that board and accept employment with the board; provided:

- 1) that he or she had no involvement in creating the vacancy;
- 2) that he or she did not resign with any advance agreement or understanding that he or she would be hired for the position; and,
- 3) that he or she has had no discussions with or otherwise expressed his or her interest in the position to the other board members prior to his or her resignation and application.

Based on information obtained by the Ethics Commission, Mr. Raine, while serving as Chairman of the Mobile County Personnel Board, has had discussions concerning his interest with the current Personnel Director, who is the appointing authority for the vacant Assistant Director's position. In addition, Mr. Raine voted and participated in the current Personnel Director being given a one-year contract to expire in October of 2002.

The Ethics Commission has obtained information indicating that on July 3, 2001, while serving as Chairman of the Mobile County Personnel Board, Mr. Raine proposed that the Board delay announcing a competitive examination for the position at a regular board meeting. The Board, apparently, in response to Mr. Raine's proposal instructed the Personnel Director not to announce the examination. The Personnel Director reports to and is supervised by the Board and its Chairman.

Based on these actions, Mr. Raine has participated in the possibility that the Personnel Director's position will become vacant at the end of her current contract, as well as having had discussions with the Personnel Director concerning his interest in the Assistant Director's position prior to it being announced publicly as being vacant and prior to his resignation from the Personnel Board.

Based on the facts as provided and the above law, the Chairman of the Mobile County Personnel Board may not apply for the vacant position of Assistant Personnel Director, as he has had discussions with the Personnel Director about his interest in the position prior to the vacancy being announced, and where the Personnel Director was directed to take no action on announcing the job vacancy upon motion made by the Chairman.

The Chairman of the Mobile County Personnel Board may not apply for the position of Personnel Director at the end of the current Personnel Director's contract, as he was involved in the current Personnel Director only being given a one-year contract.

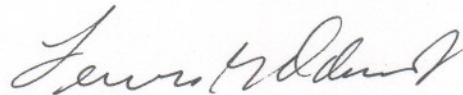
CONCLUSION

The Chairman of the Mobile County Personnel Board may not apply for the vacant position of Assistant Personnel Director, as he has had discussions with the Personnel Director about his interest in the position prior to the vacancy being announced, and where the Personnel Director was directed to take no action on announcing the job vacancy upon motion made by the Chairman.

The Chairman of the Mobile County Personnel Board may not apply for the position of Personnel Director at the end of the current Personnel Director's contract, as he was involved in the current Personnel Director only being given a one-year contract.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on January 9, 2002.



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