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December 5, 2001

ADVISORY OPINION NO. 2001-51

Wilson Mobley, Jr.
County Administrator
Coffee County Commission
2 County Complex
1065 McKinnon Street
New Brockton, Alabama 36351

Personal Gain/County Commission
Canceling County Cellular Phone Service
For County Commissioner And Paying
Commissioner The Base Monthly Rate To
Pay Towards His Personal Cellular Phone
Bill.

The Coffee County Commission may not
pay the base monthly rate for cellular phone
service to a member of the County
Commission to be applied towards that
Commissioner's personal cellular phone bill
in lieu of providing him with a County
cellular phone.

Dear Mr. Mobley:

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 County Commission cancel a County cellular phone and pay a County Commissioner the base monthly rate that the County cellular phone costs?

FACTS AND ANALYSIS

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

Wilson Mobley, Jr. is the Coffee County Administrator. He states that each County Commissioner is issued a cellular phone for County business purposes. The minimum monthly rate per phone is \$19.95, and the average phone bill is approximately \$45.00 per month.

He states that one of the County Commissioners owns an insurance company in Dothan, Alabama. This Commissioner was issued a County cellular phone upon election, and he carries a personal cellular phone and pager due to his business. During the past year, he is often times unreachable by way of County cellular phone but always accessible through his business cellular phone.

Based on this situation, the County Commission would like to cancel the cellular phone issued to this County Commissioner and pay him the base monthly rate that the County phone would cost in lieu of providing him with a County phone. Mr. Mobley states that this would make communication easier for all parties involved.

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 36-25-5(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 36-25-5(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.”

In addition to the Alabama Ethics law, the Constitution of Alabama of 1901, Amendment No. 58, Section 93, prohibits the State from lending its money or credit to any individual.

The County Commission members are issued cellular phones to assist them in conducting official County business. While it is often difficult to totally separate one’s official business activities from one’s personal business activities, it appears that the difficulties in contacting this County Commissioner through his County cellular phone are based on the fact that he has chosen to carry only his personal phone with him.

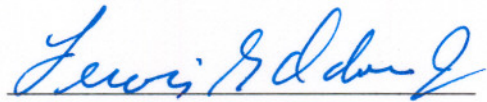
CONCLUSION

The Coffee County Commission may not pay the base monthly rate for cellular phone service to a member of the County Commission to be applied towards that Commissioner’s personal cellular phone bill in lieu of providing him with a County cellular phone.

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AUTHORITY

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

A handwritten signature in blue ink, reading "Lewis G. Odom, Jr.", written over a horizontal line.

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