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February 6, 2002

ADVISORY OPINION NO. 2002-07

The Honorable Loretta Spencer
Mayor, City of Huntsville
Post Office Box 308
Huntsville, Alabama 35804

Conflict Of Interest/Business With Which
Adult Children Of Mayor Are Associated
Bidding On City Contract.

A business with which the adult children of
the Mayor of the City of Huntsville are
associated may bid on a contract to provide
petroleum products to the City of Huntsville;
provided, that the Mayor not vote, attempt to
influence, or in any manner participate in
any aspect of the bid process.

Conflict Of Interest/Mayor Executing
Contract Between City And Business With
Which Adult Children Are Associated.

The Mayor, in performing her ministerial
functions, may execute a contract on behalf
of the City of Huntsville, which has been
awarded to a business with which her adult
children are associated, when the contract
was obtained through the competitive bid
process.

Conflict Of Interest/Business With Which Adult Children Of Mayor Are Associated Bidding On Joint Cooperative Procurement Program Between The City Of Huntsville, Madison County, And The Huntsville Board Of Education.

A business with which the adult children of the Mayor of the City of Huntsville are associated may bid on a contract to provide petroleum products through a joint cooperative procurement program between the City of Huntsville, Madison County, and the Huntsville Board of Education; provided, that the Mayor not vote, attempt to influence, or in any manner participate in any aspect of the bid process.

Dear Mayor Spencer:

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.

QUESTIONS PRESENTED

- 1) May a business employing the adult children of the Mayor of the City of Huntsville submit a bid for the procurement of petroleum products with the City of Huntsville?
- 2) Should a business with which the adult children of the Mayor of the City of Huntsville are associated be the successful bidder, may the Mayor execute the contract on behalf of the City?
- 3) May the City of Huntsville participate in a joint cooperative procurement with Madison County and the Huntsville Board of Education for the procurement of petroleum products, when one of the bidders is the employer of the Mayor's adult children?

FACTS AND ANALYSIS

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

Loretta Spencer is the Mayor of the City of Huntsville, Alabama. Her adult son and daughter are the beneficiaries of an irrevocable trust, which owns the controlling stock in Spencer Oil Company, Inc. Both are also employed by Spencer Oil Company. Mayor Spencer's former husband, Guy Spencer, Jr., is the Chairman of the Board of the company and directs the trust. He no longer owns any stock in the company, having sold his stock to the company. He receives installment payments from the company in payment for his stock. Mayor Spencer states that they have been divorced for more than 15 years and while she does receive alimony payments from him, she has no financial interest in, nor receives any compensation from Spencer Oil.

In the future, the City of Huntsville will solicit competitive bids for the procurement of petroleum products and related services for the City of Huntsville. Spencer Oil has inquired about its ability to participate in this procurement by submitting a bid as either a prime contractor or as a sub-contractor to a prime contractor.

The City of Huntsville presently does not have a competitive procurement ongoing at this time but expects to in the future.

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(2) defines a business with which the person is associated as:

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business."

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."

On July 12, 2000, the Commission rendered Advisory Opinion No. 2000-20, which held that:

"An investment advisory firm owned in part by a member of the Alabama House of Representatives may do business with public entities; provided, that the

member of the Alabama House of Representatives not be personally and directly involved in any aspect of a transaction with public entities within his sphere of influence including, but not limited to the solicitation or negotiation of contracts as well as personally making contact with public entities, regardless of the means of contact, as his direct contact with those public entities would be a use of office for personal gain.”

Likewise, that opinion pointed out that this prohibition applies solely to the public official, who is in a position to influence the awarding of the contract, and not to the business with which he is associated.

Likewise, in this case, the prohibitions contained in the Ethics law would prohibit Mayor Spencer from using her position as Mayor to influence the awarding of the contract but would not prohibit Spencer Oil, a business with which her children are associated, from seeking City business.

It is standard procedure for a Mayor to execute contracts on behalf of the City. There would not be a prohibition in Mayor Spencer executing a contract on behalf of the City of Huntsville, when Spencer Oil is the successful bidder and is awarded the contract, and where Mayor Spencer has had no involvement in the bid process.

The same rules and prohibitions would apply to a joint cooperative procurement program between the City of Huntsville, Madison County, and the Huntsville Board of Education.

Based on the facts as provided and the above law, a business with which the adult children of the Mayor of the City of Huntsville are associated may bid on a contract to provide petroleum products to the City of Huntsville; provided, that the Mayor not vote, attempt to influence, or in any manner participate in any aspect of the bid process.

Further, the Mayor, in performing her ministerial functions, may execute a contract on behalf of the City of Huntsville, which has been awarded to a business with which her adult children are associated, when the contract was obtained through the competitive bid process.

In addition, a business with which the adult children of the Mayor of the City of Huntsville are associated may bid on a contract to provide petroleum products through a joint cooperative procurement program between the City of Huntsville, Madison County, and the Huntsville Board of Education; provided, that the Mayor not vote, attempt to influence, or in any manner participate in any aspect of the bid process.

CONCLUSION

A business with which the adult children of the Mayor of the City of Huntsville are associated may bid on a contract to provide petroleum products to the City of Huntsville; provided, that the Mayor not vote, attempt to influence, or in any manner participate in any aspect of the bid process.

The Mayor, in performing her ministerial functions, may execute a contract on behalf of the City of Huntsville, which has been awarded to a business with which her adult children are associated, when the contract was obtained through the competitive bid process.

A business with which the adult children of the Mayor of the City of Huntsville are associated may bid on a contract to provide petroleum products through a joint cooperative procurement program between the City of Huntsville, Madison County, and the Huntsville Board of Education; provided, that the Mayor not vote, attempt to influence, or in any manner participate in any aspect of the bid process.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on February 6, 2002.



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