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March 6, 2002

RECONSIDERATION OF  
**ADVISORY OPINION NO. 2002-11**

Dr. Timothy G. Lull  
Superintendent  
Opp City Schools  
P.O. Box 840  
305 East Stewart Avenue  
Opp, Alabama 36467

Use Of Office For Personal Gain/  
Superintendent Of City School System  
Recommending Wife For Position Within  
System.

The Superintendent of the Opp City School System may not recommend his wife for a position within the school system, as the interview/ranking process for the current vacancy was conducted by a subordinate of the Superintendent.

The wife of the Superintendent of the Opp City School System may seek and accept employment with that school system; provided, that the Superintendent did not use his position to influence the hiring of his wife; and, that the Superintendent did not vote, attempt to influence, or otherwise participate in the selection process, and where the selection process is conducted by an impartial third party or parties who do not answer to the Superintendent.

The Superintendent of the Opp City School System may not make recommendations affecting his wife's employment including, but not limited to, her hiring, unless there is an interview/ranking process conducted by an independent/impartial party or parties who do not answer to the Superintendent, and where the Superintendent merely functions ministerially in passing the recommendation in order of ranked applicants to the school board for selection.

Dear Dr. Lull:

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 Superintendent of the Opp City School System, who makes recommendations to the school board regarding employment, recommend his wife for a position within the system?

#### **FACTS AND ANALYSIS**

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

Dr. Timothy G. Lull is the appointed Superintendent of the Opp City School System. The Opp City School System has applied for a grant to work with at-risk students in a new program that includes MacArthur State Technical College in Opp, Alabama.

MacArthur State Technical School does not fall under the Opp City School System. The school system has collaboratively entered into an agreement to offer the Middle College High School to students who are potential dropouts from the Opp City Schools.

An Opp City Schools Administrator has recommended to Dr. Lull that the system employ his wife, Gay M. Lull, as a Success Specialist to administer the program. Mrs. Lull is currently receiving teacher retirement from the State of Alabama. Mrs. Lull is currently coordinating the program at no expense to either institution. The position of Success Specialist is currently a

volunteer position; however, if the grant is approved, the position would pay \$18,000.00 per year.

The Opp City School System advertised the position for twenty days, and has conducted interviews of the applicants in anticipation of funding from grants or another potential source.

Dr. Lull states that the person who conducted the interviews serves in a position as the Middle School Assistant Principal under a supervisor who answers to him. In addition, the interviewer serves half-time as the curriculum director under Dr. Lull's direct supervision.

Because the Superintendent makes hiring recommendations to the school board, Dr. Lull is concerned about nepotism and is, therefore, requesting this opinion.

The Alabama Ethics Law, Code of Alabama, 1975, 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 36-25-1(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(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 36-25-9(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."

Section 16-12-16, Code of Alabama, 1975, requires the City Superintendent of Schools to nominate in writing all recommendations regarding employment matters including transfers, promotions, suspensions, dismissals, etc. While this section requires action on the Superintendent's part, it comes into direct conflict with the Ethics Law when a family member is involved. The Commission has addressed this conflict on several occasions.

On February 5, 1997, the Commission rendered Advisory Opinion No. 96-94, which stated:

"An elected Superintendent of Education may not take an active role in recommending a family member, as defined by Section 36-25-1(12), for a teaching position with that school system without violating the Alabama Ethics Law."

"A family member of an elected School Superintendent may seek and accept employment with that school system; provided, the Superintendent did not use his or her position to influence the hiring of the family member; and, that the Superintendent did not vote, attempt to influence, or otherwise participate in the selection process."

"An elected Superintendent of Education may recommend her son for a Marketing Education position with the school system of which she serves as Superintendent, when her son is the only certified person in the local area to apply; provided, the

position is advertised beyond the local area including, but not limited in the various education trade journals; that there is an interview/ranking process conducted by an independent, impartial party or parties who do not answer to the Superintendent and where the Superintendent merely functions ministerially in passing the names in order of the previously ranked applicants on to the school board for selection; and further provided, that the Superintendent had no part in creating the vacancy.”

Likewise, Advisory Opinion No. 97-22, rendered on April 9, 1997, held that:

“The Superintendent of a Board of Education may not make recommendations affecting a spouse or family member’s employment, unless there is an interview/ranking process conducted by an independent/impartial party or parties who do not answer to the Superintendent, and where the Superintendent merely functions ministerially in passing the recommendation in order of ranked applicants to the school board for selection.”

In the facts before the Commission, while Dr. Lull is required by law to make recommendations to the school board for employment, he may not recommend his wife, unless his wife has been selected through an interview/ranking process conducted by an independent/impartial party or parties who do not answer to the Superintendent. In the current situation, the interviewing/ranking process was conducted by a subordinate of Dr. Lull.

Because the Opp City Schools Administrator, who recommended the Superintendent’s wife for employment, answers to Dr. Lull, Dr. Lull may not recommend that his wife be hired by the school board to fill the current vacancy.

Based on the facts as provided and the above law, the Superintendent of the Opp City School System may not recommend his wife for a position within the school system, as the interview/ranking process for the current vacancy was conducted by a subordinate of the Superintendent.

Further, the wife of the Superintendent of the Opp City School System may seek and accept employment with that school system; provided, that the Superintendent did not use his position to influence the hiring of his wife; and, that the Superintendent did not vote, attempt to influence, or otherwise participate in the selection process, and where the selection process is conducted by an impartial third party or parties who do not answer to the Superintendent.

Additionally, the Superintendent of the Opp City School System may not make recommendations affecting his wife’s employment including, but not limited to, her hiring,

unless there is an interview/ranking process conducted by an independent/impartial party or parties who do not answer to the Superintendent, and where the Superintendent merely functions ministerially in passing the recommendation in order of ranked applicants to the school board for selection.

### CONCLUSION

The Superintendent of the Opp City School System may not recommend his wife for a position within the school system, as the interview/ranking process for the current vacancy was conducted by a subordinate of the Superintendent.

The wife of the Superintendent of the Opp City School System may seek and accept employment with that school system; provided, that the Superintendent did not use his position to influence the hiring of his wife; and, that the Superintendent did not vote, attempt to influence, or otherwise participate in the selection process, and where the selection process is conducted by an impartial third party or parties who do not answer to the Superintendent.

The Superintendent of the Opp City School System may not make recommendations affecting his wife's employment including, but not limited to, her hiring, unless there is an interview/ranking process conducted by an independent/impartial party or parties who do not answer to the Superintendent, and where the Superintendent merely functions ministerially in passing the recommendation in order of ranked applicants to the school board for selection.

### AUTHORITY

By 4-1 vote of the Alabama Ethics Commission on March 6, 2002.

Reconsidered by 4-0 vote of the Alabama Ethics Commission on April 3, 2002.



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