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January 8, 2003

ADVISORY OPINION NO. 2002-52

The Honorable Carol Reynolds
City Council Member
Birmingham City Council
Office of the City Council
710 North Twentieth Street
Birmingham, Alabama 35203

Conflict Of Interest/Birmingham City Council Member Employed By Birmingham City Water Works And Sewer System Participating In Discussions On Matters Concerning The Operation Of The System/Water Works And Sewer Board.

A member of the Birmingham City Council, who is employed with the Birmingham Water Works and Sewer System, may participate in discussions and vote on matters concerning the general operation of the System/Water Works Board; provided, the matter being discussed and/or voted on does not affect her employment with the Water Works and Sewer System differently than it affects the employment of all other Water Works and Sewer System employees.

Conflict Of Interest/Birmingham City Council Member Voting On Candidates For Birmingham Water Works And Sewer System Board.

A member of the Birmingham City Council, who is employed by the Birmingham Water Works and Sewer System, may not vote, attempt to influence or otherwise participate in any discussions or votes pertaining to the appointment of members to the Birmingham Water Works and Sewer Board, as she would, in effect, be voting on the appointment of her superiors.

For an interpretation of Section 8.06 of the Mayor-Council Act, the requestor of this opinion should contact the Office of the Attorney General.

Dear Councilwoman Reynolds:

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) Can a Birmingham City Council member, who is an employee of the Water Works and Sewer System for the City of Birmingham (System), participate in Council discussions on matters concerning the operation of the System and/or the Water Works and Sewer Board (BWVB)?
- 2) Can a Birmingham City Council member, who is an employee of the System, vote on resolutions/ordinances pertaining to the operation of the System or the BWVB?
- 3) Can a Birmingham City Council member, who is an employee of the System, vote on candidates for BWVB positions?

FACTS AND ANALYSIS

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

Carol Reynolds was elected to the Birmingham City Council in October of 2001. At the time of her election, she was employed and remains employed, in a non-managerial capacity, by the Water Works and Sewer System for the City of Birmingham. At the time of her election, the City of Birmingham was involved in litigation, pre-dating her election, to stop the transfer of the assets of the System to the Water Works and Sewer Board and cause said assets to remain under the ownership of the City of Birmingham. By Court order, the System's assets were ruled to be effectively transferred to the Birmingham Water Works and Sewer Board. The members of the Birmingham Water Works and Sewer Board have been and remain appointed by the members of the Birmingham City Council. The Birmingham Water Works and Sewer Board manages the operations of this System.

Councilwoman Reynolds states that, since assuming office, she has not engaged in any discussions or voted on any matters involving the System or the Birmingham Water Works Board.

The City of Birmingham has adopted a Mayor-Council form of government, which is governed by the Mayor-Council Act of 1955, adopted by the Legislature of Alabama on September 9, 1955, as Act No. 452.

Section 8.06 of the Mayor-Council Act reads, in pertinent part:

“Officers and employees not to be privately interested in city contracts. No member of the council...shall be interested, directly or indirectly, in any contract for work or material, or the profits thereof, or services to be furnished or performed for the city...No such member of the council...of such city shall be interested in or an employee...of any corporation operating any public service utility within said city. No such member of the council...shall accept or receive, directly or indirectly, from any person, firm or corporation operating within the territorial limits of said city any...water works...or other business using or operating under a public franchise...or accept or receive, directly or indirectly, from any such person, firm or corporation any gift or other thing of value or any service upon terms more favorable than are granted to the public generally... Every such contract or agreement shall be voidable by the mayor or the council...”

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(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."

The Commission has consistently held that a public official, who is employed by a body whose board or commission is appointed by the elective body on which that individual serves, may not vote or participate in any discussions regarding the appointment of members to his or her employer's board, as he or she would, in effect, be appointing his or her own supervisors.

Most recently, the Commission rendered Advisory Opinion No. 2001-30, which states that:

"A member of the City of Fairfield City Council, who is employed as a counselor with the City of Fairfield Board of Education, may not vote on, attempt to influence or otherwise participate in the appointment of members to the City of Fairfield Board of Education, as he would, in effect, be appointing his superiors."

It would not be a conflict of interest for the City Council member to participate in discussions and/or vote on matters pertaining to the general operation of the Water Works and Sewer Board; provided, the matter being discussed or voted on does not affect her employment or the conditions of her employment differently than it affects those of all other employees of the Birmingham Water Works and Sewer Board.

For an interpretation of Section 8.06 of the Mayor-Council Act, the requestor of this opinion should contact the Office of the Attorney General.

CONCLUSION

A member of the Birmingham City Council, who is employed with the Birmingham Water Works and Sewer System, may participate in discussions and vote on matters concerning the general operation of the System/Water Works Board; provided, the matter being discussed and/or voted on does not affect her employment with the Water Works and Sewer System differently than it affects the employment of all other Water Works and Sewer System employees.

A member of the Birmingham City Council, who is employed by the Birmingham Water Works and Sewer System, may not vote, attempt to influence or otherwise participate in any

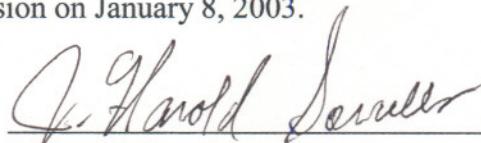
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discussions or votes pertaining to the appointment of members to the Birmingham Water Works and Sewer Board, as she would, in effect, be voting on the appointment of her superiors.

For an interpretation of Section 8.06 of the Mayor-Council Act, the requestor of this opinion should contact the Office of the Attorney General.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on January 8, 2003.



J. Harold Sorrells
Acting Chair in the absence of the Chair/
Vice-Chair
Alabama Ethics Commission