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**ETHICS COMMISSION**



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February 5, 2003

**ADVISORY OPINION NO. 2003-05**

Mr. William W. Sanderson, Jr.  
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 Lanier, Ford, Shaver & Payne, P.C.  
 200 West Side Square  
 Suite 5000  
 Huntsville, Alabama 35801

Use Of Office For Personal Gain/Board Of  
 Education Purchasing Property Owned In  
 Part By President Of Board Of Education.

The City of Madison Board of Education may purchase property for an elementary school site from a limited partnership, a member of which is the President of the City of Madison Board of Education, provided, the transaction is an arms-length transaction, and the sale of the property is at or less than the fair market value of the property; that the price of the property is established through an independent appraiser; that the President of the City of Madison Board of Education has not participated in any discussions regarding the transaction; and, that he not vote, attempt to influence or otherwise participate in any official action by the Board in connection with the purchase of the property.

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Dear Mr. Sanderson:

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 City of Madison Board of Education purchase property for an elementary school site from Spencer Family Properties, Ltd., a limited partnership that includes among its members Donald H. Spencer, Jr., the President of the City of Madison Board of Education?

### **FACTS AND ANALYSIS**

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

William W. Sanderson, Jr. represents the City of Madison Board of Education. The Board of Education is interested in purchasing property for an elementary school site. A portion of the site is owned by Spencer Family Properties, Ltd., a limited partnership that includes among its members Donald H. Spencer, Jr. Mr. Spencer also serves as President of the City of Madison Board of Education.

All discussions and negotiations regarding the potential purchase of the land to date have been conducted with other members of the Spencer family. Mr. Spencer has neither solicited the Board with respect to the property, nor participated in any negotiations regarding a possible contract for purchase.

The site will include approximately 32 acres. Of that acreage, more than half is owned by Donald H. Spencer, Sr. and Barbara Spencer, parents of the School Board President. Donald Spencer, Jr. has no personal ownership interest in this acreage. The remaining acreage is owned by Spencer Development Company, Ltd., a limited family partnership. Donald Spencer, Jr. owns five of 40 units in the limited partnership. Any purchase of the property will be for a price at or below the value established by an independent appraiser retained by the Board in a recent appraisal of the property.

If the Superintendent recommends purchase of this property, Mr. Spencer would not participate in the Board discussion, would not discuss the purchase with other Board members, nor would he vote on the Superintendent's recommendation to purchase the property.



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."

The Commission has addressed this issue in the past. Most recently, in May of 1999, it rendered Advisory Opinion No. 99-19, which held:

"The Tallassee City Board of Education may purchase commercial property in the City of Tallassee to be used as its offices from a current member of the Board, as the purchase price is less than the fair market value of the property. However, the transaction must be an arms-length transaction, and the City Board Member may not vote, attempt to influence or otherwise participate in any official action by the board in connection with the purchase of the property."

Based on the facts as provided and the above law, the City of Madison Board of Education may purchase property for an elementary school site from a limited partnership, a member of which is the President of the City of Madison Board of Education, provided, the transaction is an arms-length transaction, and the sale of the property is at or less than the fair market value of the property; that the price of the property is established through an independent appraiser; that the President of the City of Madison Board of Education has not participated in any discussions regarding the transaction; and, that he not vote, attempt to influence or otherwise participate in any official action by the Board in connection with the purchase of the property.

### CONCLUSION

The City of Madison Board of Education may purchase property for an elementary school site from a limited partnership, a member of which is the President of the City of Madison Board of Education, provided, the transaction is an arms-length transaction, and the sale of the property is at or less than the fair market value of the property; that the price of the property is established

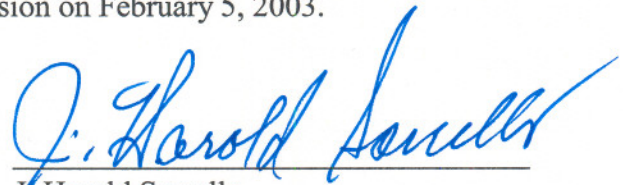


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through an independent appraiser; that the President of the City of Madison Board of Education has not participated in any discussions regarding the transaction; and, that he not vote, attempt to influence or otherwise participate in any official action by the Board in connection with the purchase of the property.

**AUTHORITY**

By 4-0 vote of the Alabama Ethics Commission on February 5, 2003.



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