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**ADVISORY OPINION NO. 2003-40**

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Conflict Of Interest/Former Member Of  
Geneva County Board Of Education  
Applying For Position Of Chief School  
Financial Officer

A member of the Geneva County Board of Education may apply for the position of Chief School Financial Officer subsequent to his resignation from the Board; provided, that when he resigned from the Board there was no prearranged understanding that he would be hired; that he did not use his influence as a Board member to obtain the position; and where the Board, after reviewing qualified applicants, determines that the former member is the most qualified applicant for the position; and further, where he was not involved in creating the vacancy.

Dear Mr. Marsh:

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 member of the Geneva County Board of Education resign from the Board and then apply for the position of Chief School Financial Officer?
- 2) If the answer to question one is affirmative, and if the former Board member is the best qualified for the position, may the Superintendent recommend and the Board hire the former Board of Education member as the Chief School Financial Officer?

### **FACTS AND ANALYSIS**

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

The law firm of Marsh, Cotter & Tindol, LLP, represents the Geneva County Board of Education. The Geneva County Board of Education is composed of five members, who are elected by the qualified electors of Geneva County, pursuant to Section 16-8-1, Code of Alabama. The Board exercises, through its executive officer, his assistants and the County Board of Education, the control and supervision of Geneva County. Further, pursuant to Section 16-8-23, the Board shall appoint, upon the written recommendation of the County Superintendent “. . . all principals, teachers, clerical and professional assistants authorized by the Board.”

On May 8, 2003, the State Board of Education approved the adoption of a new chapter to the rules of the State Board of Education. Chapter 290-2-5, Chief School Financial Officer, requires each local Board of Education to have a Chief School Financial Officer. The new rules also require that the State Board of Education approve a certification program to provide minimum standards, professional development and continuing education for the wide variety of assignments, duties and tasks of the Chief School Financial Officer (see attached Exhibit “A”).

On July 18, 2003, the current Superintendent learned that the Chief School Financial Officer had requested a transfer to a full-time teaching position with the Board, and that a vacancy would exist on July 24, 2003, provided the Board accepted the recommendation of the Superintendent to transfer the Chief School Financial Officer from the central office to a teaching position. On July 18, 2003, the Superintendent (assuming that the transfer would be approved) notified all school principals that the Board would be accepting applications for the position of Chief School Financial Officer (see attached Exhibit “B”). The Superintendent of Education caused the notice of vacancy to be published in the local Geneva County paper, which informed the public that applications would be accepted through August 7, 2003.

William K. Hales was a member of the Geneva County Board of Education and held the position of Chairman of the Board on July 24, 2003. He was present at the Board meeting of July 24, when the Board transferred the Chief School Financial Officer to the classroom and caused the Chief School Financial Officer position to become vacant. Mr. Hales was not required to cast a vote on the transfer because the motion carried 4-0, and the Chairman is not required to vote except in the event of a tie.

The following day, July 25, Mr. Hales applied for the position of Chief School Financial Officer. A copy of his resume is attached hereto as Exhibit "C". Mr. Hales was a member of the Board at that time.

A number of applications were received for the position. Mr. Hales withdrew his application for consideration for the Chief School Financial Officer position on August 8, 2003. The Superintendent is not satisfied with the experience of the seven remaining candidates and plans to re-advertise the Chief School Financial Officer vacancy position in *The Dothan Eagle* newspaper, which has a larger circulation, and which should draw increased interest in the position, and an increase in applications.

Mr. Hales resigned from the Board on August 13, 2003. Mr. Hales plans to submit his application for the vacancy of the Chief School Financial Officer position once it has been advertised. Mr. Marsh states that it is his understanding, from discussing the matter with the Superintendent, that there has been no advance understanding or agreement between Mr. Hales and the Superintendent or any Board member that he would be hired to fill the vacancy, and Mr. Hales, the Superintendent and the Board members all represent that Mr. Hales did not lobby his fellow Board members prior to his resignation in an effort to obtain the employment.

In the situation before the Board, since Mr. Hales has resigned from the Board and has indicated that he plans to apply for the position of Chief School Financial Officer, if he is the best qualified candidate for the Chief School Financial Officer position, may the Superintendent recommend and the Board hire him for the Chief School Financial Officer vacancy?

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(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 36-25-13(c) states:

“(c) No public official, director, assistant director, department or division chief, purchasing or procurement agent having the authority to make purchases, or any person who participates in the negotiation or approval of contracts, grants, or awards or any person who negotiates or approves contracts, grants, or awards shall enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which the person was a member or employee for a period of two years after he or she leaves the membership or employment of such governmental agency.”

Section 36-25-8 states:

"No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in

this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business."

As a general rule, the Commission has repeatedly held that a Board member, who desires employment with that Board, must resign from the Board prior to his applying for the position or otherwise expressing his interest in the position. The Commission has further held that the individual must not have been involved in creating the vacancy and must not have resigned with a prearranged understanding that he or she would be employed.

In October of 2002, the Commission reconsidered Advisory Opinion No. 2002-40. This opinion involved a former member of an Economic and Industrial Development Authority having certain discussions with the director of the Authority about a vacancy on the staff. That opinion stated:

"While the Commission has addressed this issue in the past, each specific set of facts and circumstances must be reviewed on its own."

"In the facts before the Commission, it is obvious that all parties involved took special care to see that the Ethics Law was complied with, and that any actions taken regarding the hiring were done according to law."

Further, that opinion held:

"A member of the Economic and Industrial Development Authority of Jefferson County may accept employment with the Industrial Development Authority Board, when he resigned from the Board with no prearranged understanding that he would be hired, where he did not use his influence as a Board member to obtain the position, and where the Board, after reviewing qualified applicants, determines that the former member is the most qualified applicant for the position."

In the facts before the Commission, it appears that all parties involved have taken special care to see that the Ethics Law has been complied with, and that Mr. Hales receives no special consideration, other than being considered and rated with the other applicants for the position.

Based on the facts as provided and the above law, a member of the Geneva County Board of Education may apply for the position of Chief School Financial Officer subsequent to his

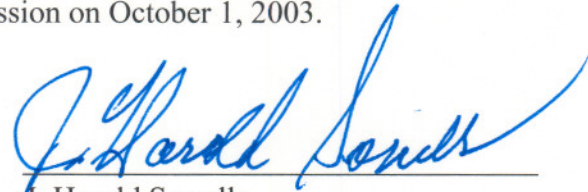
resignation from the Board; provided, that when he resigned from the Board there was no prearranged understanding that he would be hired; that he did not use his influence as a Board member to obtain the position; and where the Board, after reviewing qualified applicants, determines that the former member is the most qualified applicant for the position; and further, where he was not involved in creating the vacancy.

#### CONCLUSION

A member of the Geneva County Board of Education may apply for the position of Chief School Financial Officer subsequent to his resignation from the Board; provided, that when he resigned from the Board there was no prearranged understanding that he would be hired; that he did not use his influence as a Board member to obtain the position; and where the Board, after reviewing qualified applicants, determines that the former member is the most qualified applicant for the position; and further, where he was not involved in creating the vacancy.

#### AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on October 1, 2003.



J. Harold Sorrells  
Chair  
Alabama Ethics Commission