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**ADVISORY OPINION NO. 2003-43**

Ms. Shelia Smoot  
Jefferson County Commission, District Two  
Commissioner of Roads and  
Transportation/Community Development  
Suite 250  
716 Richard Arrington, Jr. Blvd. N.  
Birmingham, Alabama 35203

Conflict Of Interest/County Commissioner  
Hosting A Weekly Television Business  
Program On Which Advertisers Purchase  
Air Time, With The Funds Being Used to  
Pay The Costs Of the Broadcast and the  
Costs of the Host's Time

A County Commissioner, with an  
independent career in television  
broadcasting and consumer advocacy, may  
host a weekly television business program  
on which advertisers purchase air time, with  
such funds being used to pay for the costs of  
the broadcast and the costs of the host's  
time, when the County Commissioner is not  
involved in the sale of air time to  
advertisers.

Conflict Of Interest/County Commissioner  
Voting On Measures Before The  
Commission Affecting Advertisers

A County Commissioner may not vote,  
attempt to influence or otherwise participate  
on any particular measures that affect  
advertisers on her program differently than  
they would affect other businesses and/or  
entities.

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A County Commissioner may host a weekly television business program; provided, that all such activities related to the hosting of the weekly television business program are done on her own time, whether after-hours, weekends, etc.; and, that there is no use of any resources belonging to the County, to include public equipment, facilities, time, materials, human labor or other public property under her discretion or control, to assist her in the hosting of the weekly television business program.

Dear Ms. Smoot:

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) Under the Alabama Ethics Law, may a Jefferson County Commissioner, with an independent career in television broadcasting and consumer advocacy, host a weekly television business program on which advertisers purchase air time, with such funds used to pay for the costs of the broadcast and the costs of the host's time?
- 2) If so, would the Commissioner then be precluded from voting on any particular measures before the Commission affecting advertisers?

#### **FACTS AND ANALYSIS**

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

Shelia Smoot is the Jefferson County Commissioner for District Two. The position of Jefferson County Commissioner allows for gainful employment outside public duties. Commissioners work part-time schedules, and they earn \$75,000 annually to reflect this abbreviated schedule. Because of the limited time demands and salary, Commissioners often

seek gainful employment in addition to their public role, ideally in a profession in which they have experience or expertise. Ms. Smoot states that, for example, Commission President Larry Langford and Commissioner Gary White are consultants for private-sector businesses.

Ms. Smoot states that she has an extensive career in television broadcasting and consumer advocacy. She received a bachelor's degree in telecommunications in 1985 from Michigan State. In 1992, she moved to Alabama, where she became the news bureau chief in Anniston for WVTM-13 (NBC). Two years later, she also became a political reporter for the station. In 1996, she came to Birmingham, where she began working for Cox Radio. After a stint in radio, she returned to television as an anchor for the morning and evening television news broadcasts for Fox 6 News. Her duties included a periodic news segment for consumers, "6 On Your Side." In 1999, she began hosting a consumer-focused program, "Know Your Rights With Shelia Smoot," which ran on 16 Alabama television stations and the Alabama Radio Network. She also created another television program, "Consumer Corner," that focused on consumer issues.

In furtherance of her career, and because her schedule as Commissioner allows, she plans to host a television program, "Business Alabama With Shelia Smoot," on a local Birmingham station beginning later this summer. The weekly program will be devoted to educating consumers about business and finance. It is scheduled to air on ABC 33/40 at 11:00 p.m. Each week's program will focus on four areas of interest to consumers: (1) business, (2) technology, (3) automobiles, and (4) law. She states that a single broadcast will have approximately eight minutes of commercial time, which, when sold, will cover the costs of the show and the costs of her time. The sale of air time to advertisers is done by a separate sales staff.

Ms. Smoot states that she understands that hosting a media program is not unique among political officeholders. Governor Fob James hosted a radio broadcast during his most recent administration. She states that the Ethics Commission concluded in Advisory Opinion No. 95-81, that his program, which was also underwritten by advertisers, did not violate the Ethics Law. In addition, Senator Jeff Sessions hosts a monthly television program from Washington—"In Session with Jeff Sessions"—in which he discusses political issues and interviews officeholders. Ms. Smoot's program, however, unlike those hosted by Governor James and Senator Sessions, would feature her in her capacity as a private citizen, rather than as a political figure. Moreover, the program would be business-oriented, instead of political in content.

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 36-25-5(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 36-25-5(c) states:

"(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy."

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."

The Alabama Ethics Law would not prevent Ms. Smoot from serving as a host of this television program; provided, that all activities in conjunction with the program are done on her own time, with no use of County resources to assist her in performing the responsibilities.

In addition, should a specific advertiser have a specific matter pending before the Jefferson County Commission, Ms. Smoot may not vote, attempt to influence or otherwise participate in any action on that matter that would affect the advertiser differently than other entities or businesses.

Based on the facts as provided and the above law, a County Commissioner, with an independent career in television broadcasting and consumer advocacy, may host a weekly television business program on which advertisers purchase air time, with such funds being used to pay for the costs of the broadcast and the costs of the host's time, when the County Commissioner is not involved in the sale of air time to advertisers.

However, a County Commissioner may not vote, attempt to influence or otherwise participate on any particular measures that affect advertisers on her program differently than they would affect other businesses and/or entities.

Further, a County Commissioner may host a weekly television business program; provided, that all such activities related to the hosting of the weekly television business program are done on her own time, whether after-hours, weekends, etc.; and, that there is no use of any resources belonging to the County, to include public equipment, facilities, time, materials, human labor or other public property under her discretion or control, to assist her in the hosting of the weekly television business program.

### CONCLUSION

A County Commissioner, with an independent career in television broadcasting and consumer advocacy, may host a weekly television business program on which advertisers purchase air time, with such funds being used to pay for the costs of the broadcast and the costs of the host's time, when the County Commissioner is not involved in the sale of air time to advertisers.

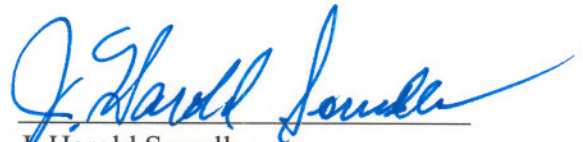
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A County Commissioner may not vote, attempt to influence or otherwise participate on any particular measures that affect advertisers on her program differently than they would affect other businesses and/or entities.

A County Commissioner may host a weekly television business program; provided, that all such activities related to the hosting of the weekly television business program are done on her own time, whether after-hours, weekends, etc.; and, that there is no use of any resources belonging to the County, to include public equipment, facilities, time, materials, human labor or other public property under her discretion or control, to assist her in the hosting of the weekly television business program.

**AUTHORITY**

By 4-0 vote of the Alabama Ethics Commission on September 3, 2003.



J. Harold Sorrells  
Chair  
Alabama Ethics Commission