STATE OF ALABAMA
ETHICS COMMISSION

MAILING ADDRESS
P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS
RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104

James L. Sumner, Jr.
Director

TELEPHONE (334) 242-2997
FAX (334) 242-0248
WEB SITE www.ethics.alalinc.net

March 31, 2004

ADVISORY OPINION NO. 2004-07

Mr. Robert W. Ennis, IV
City Attorney
City of Tuscaloosa
Legal Department
2201 University Boulevard (35401)
Post Office Box 2089
Tuscaloosa, Alabama 35403

Conflict Of Interest/Members Of City Council, Who Are Employed By Insurance Agency, Voting On Matters Involving Clients Of The Insurance Agency

Members of the Tuscaloosa City Council may not vote, attempt to influence or otherwise participate in any matters coming before the Tuscaloosa City Council involving a client of their employer, if either the employer or they stand to benefit from the Council action.

Members of the Tuscaloosa City Council, who are employed by an insurance agency, may not vote on matters involving a client of that insurance agency, if the matter under Council consideration would result in an increase of business to the insurance agency.

Members of the Tuscaloosa City Council, who are employed by an insurance agency, may not vote on matters involving a client of that insurance agency, if the matter under Council consideration involves property that the insurance agency insures.

Members of the Tuscaloosa City Council, who are employed by an insurance agency, may vote and participate in matters before the Council involving a client of the insurance agency, when the action under consideration by the Council will not result in a financial benefit to either the insurance agency or the member(s) of the City Council, or where the issue before the City Council does not involve property that the insurance agency insures.

Dear Mr. Ennis:

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) May a City Council member, who is an employee of an insurance agency, vote on a matter before the Council when it involves a client who purchases insurance from the agency, although the Council member makes no commission on the insurance sold to this client and has no individual interest, financial or otherwise, in the client?

2) Same as question one, except that the matter is routine, such as a liquor license, right-of-way permit or a zoning matter, but does not involve the expenditure of public funds?

3) Same as question one, except that the matter is not routine and involves the expenditure of public funds?

4) Same as question one, except that the Council member sold the insurance to the client and/or makes a commission on the sale?

5) Same as question one, except that the Council member has a reasonable expectation of subsequently insuring and receiving a commission on the client's project which the Council is considering?

FACTS AND ANALYSIS

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

Robert W. Ennis, IV, is the City Attorney for the City of Tuscaloosa, Alabama. Two members of the City Council of the City of Tuscaloosa are employees of a large insurance agency which insures many individuals, businesses and other enterprises throughout West Alabama. Currently, there are two matters which the City Council wishes to consider, both of which involve persons and/or firms insured by the City Council members' agency. However, before considering these matters, both elected officials wish to determine whether or not a violation of the Ethics Law could occur under these circumstances.

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."

Section 36-25-2(b) in pertinent part states:

"(b) An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided."

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 36-25-7(a) states:

"(a) No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive a thing of value for the purpose of influencing official action."

Section 36-25-7(b) states:

"(b) No public official or public employee shall solicit or receive a thing of value for himself or herself or for a family member of the public employee or family member of the public official for the purpose of influencing official action."

Section 36-25-7(c) states:

"(c) No person shall offer or give a family member of the public official or family member of the public employee a thing of value for the purpose of influencing official action."

The Ethics Law prohibits a transaction in which there is quid pro quo. In other words, the law prohibits a public official or a public employee from taking official action in exchange for a personal benefit.

Under this scenario, members of the Tuscaloosa City Council may not vote, attempt to influence or otherwise participate in any matters involving clients of that insurance agency, if the Council's action and/or vote is based on an understanding, or even the probability that this vote will result in increased business to the Council members' employers.

Questions numbered two and three ask whether the holding of the Commission would change, should the expenditure of public funds be involved. Under the Ethics Law, the Commission looks to the actions taken by the public official and/or public employee, and whether or not that public official/public employee, a family member of the public official/public employee, or a business with which they are associated benefits from their official action. The expenditure of public funds is not a requirement.

CONCLUSION

Members of the Tuscaloosa City Council may not vote, attempt to influence or otherwise participate in any matters coming before the Tuscaloosa City Council involving a client of their employer, if either the employer or they stand to benefit from the Council action.

Members of the Tuscaloosa City Council, who are employed by an insurance agency, may not vote on matters involving a client of that insurance agency, if the matter under Council consideration would result in an increase of business to the insurance agency.

Members of the Tuscaloosa City Council, who are employed by an insurance agency, may not vote on matters involving a client of that insurance agency, if the matter under Council consideration involves property that the insurance agency insures.

Members of the Tuscaloosa City Council, who are employed by an insurance agency, may vote and participate in matters before the Council involving a client of the insurance agency, when the action under consideration by the Council will not result in a financial benefit to either the insurance agency or the member(s) of the City Council, or where the issue before the City Council does not involve property that the insurance agency insures.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on March 31, 2004.

J. Harold Sorrells
Chair
Alabama Ethics Commission