



COMMISSIONERS

J. Harold Sorrells, Chairman
Raymond L. Bell, Jr., Esq., Vice-Chairman
Linda L. Green
Nancy Edwards Eldridge

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. 2004-08

Mr. Russell H. Maddox
3899 Lockerbie Drive
Birmingham, Alabama 35223

and

Mr. James W. Anderson
2612 Abingdon
Birmingham, Alabama 35243

Conflict Of Interest/Members Of City
Council Participating In Rezoning Issue In
Neighborhood Where They Or A Family
Member Resides And Owns Property

Members of the Mountain Brook City
Council may vote on a rezoning issue
affecting the neighborhood in which they or
a family member resides, as there is no
personal gain, nor will the members be
affected any differently than the other
residents of the neighborhood.

Whether or not a conflict of interest exists is
fact-specific, and the Ethics Commission is
limited to pointing out what constitutes a
conflict of interest.

Dear Messieurs Maddox and Anderson:

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 members of the Mountain Brook City Council, one who resides in a residential area and is a part owner in a "green space," and another whose father resides in the community, and is also a part owner of the "green space," who have done legal work for the land company and his father, vote on a rezoning issue affecting the neighborhood?

FACTS AND ANALYSIS

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

Russell H. Maddox and James W. Anderson are residents of the Lockerbie Subdivision of Mountain Brook, Alabama. Not only are they property owners and residents, they are part owners in the Lockerbie Land Company, which owns a "green zone," an area dedicated to the area for non-developmental purposes.

Alice Williams and William S. Pritchard, III, are members of the Mountain Brook City Council. Alice Williams lives in the Lockerbie area, and William S. Pritchard's father lives in Lockerbie.

Both Ms. Williams and Mr. Pritchard's father are shareholders in the Lockerbie Land Company, which owns an area known as the "green zone," an area set aside for non-developmental use.

There is a certain parcel located within the neighborhood that has been requested to be rezoned from "cluster-residential" to "commercial-mixed." The developer intends to use the property, if rezoned, to construct a strip mall.

The Articles of Incorporation of the Lockerbie Association, Inc., provide as follows:

"We, the undersigned persons, desiring to incorporate for the purpose of creating a non-profit corporation under the laws of the State of Alabama . . ."

In addition, the Articles state that:

"In the event of dissolution, the residual assets of the organization will be turned over to one or more organizations which themselves are exempt as organizations described in §501(c)(3) and §170(c)(2) of the Internal Revenue Code of 1954, as Amended, or corresponding sections of any prior or future law, or to the federal, state, or local government, for exclusive public purposes."

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 36-25-1(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 36-25-9(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.”

Based on the Articles of Incorporation, there is no opportunity for personal gain by any individual voting on a matter that might affect the Lockerbie Association, Inc.

Neither Ms. Williams nor Mr. Pritchard’s father’s property abuts the property to be rezoned. Both Ms. Williams and Mr. Pritchard’s father reside either internally in the neighborhood or on the backside of the neighborhood. There is no specific personal gain being directly alleged by the requestors of this opinion, other than a conflict of interest.

There are 64 residences located within the neighborhood, and there are 39 shareholders in the Lockerbie Land Company who own an undivided interest in the green zone. As previously stated, the green zone was purchased to protect the residents’ investment in their homes.

Based on the facts as provided and the above law, members of the Mountain Brook City Council may vote on a rezoning issue affecting the neighborhood in which they or a family member resides, as there is no personal gain, nor will the members be affected any differently than the other residents of the neighborhood.

Whether or not a conflict of interest exists is fact-specific, and the Ethics Commission is limited to pointing out what constitutes a conflict of interest.

CONCLUSION

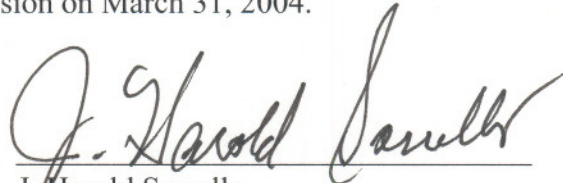
Members of the Mountain Brook City Council may vote on a rezoning issue affecting the neighborhood in which they or a family member resides, as there is no personal gain, nor will the members be affected any differently than the other residents of the neighborhood.

Whether or not a conflict of interest exists is fact-specific, and the Ethics Commission is limited to pointing out what constitutes a conflict of interest.

Messieurs Maddox and Anderson
Advisory Opinion No. 2004-08
Page five

AUTHORITY

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

A handwritten signature in dark ink, reading "J. Harold Sorrells", written over a horizontal line.

J. Harold Sorrells

Chair

Alabama Ethics Commission