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ADVISORY OPINION NO. 2004-17

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Conflict Of Interest/Member Of Baldwin
County Board Of Education Leasing
Property To Business Owned By Her Sons,
Who Intend To Do Business With The
Baldwin County Board Of Education

A member of the Baldwin County Board of Education may lease property to a company owned by her sons, when the sons intend to have a business relationship with the Baldwin County Board of Education; provided, that the Board member does not use her influence or the mantle of her office to assist her sons in obtaining business from the Baldwin County Board of Education; that she does not vote, attempt to influence or in any manner participate in any business dealings between the company and the Baldwin County Board of Education; and finally, that she does not use confidential information obtained by virtue of her service on the Board of Education to assist her sons' business.

Dear Mr. Lewis:

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 limited liability company, owned by the sons of a member of the Baldwin County Board of Education, who lease property from the member of the Board of Education, provide information packets regarding the business to schools located in Baldwin County?
- 2) Is there any limitation on the business' ability to send information packets to schools in counties other than Baldwin County?
- 3) Does the Board member's sphere of influence include any area beyond Baldwin County?
- 4) May the business do business with the schools of Baldwin County and derive profits therefrom?

FACTS AND ANALYSIS

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

Mrs. Margaret Long is a member of the Baldwin County Board of Education. Mrs. Long owns a certain parcel of real property which she intends to lease to a company known as Alligator Alley, L.L.C. Mrs. Long will be financially compensated by Alligator Alley for the lease. Alligator Alley is an Alabama limited liability company with two members, Wesley Gray Moore and Louis Brooks Moore, who are the sons of Mrs. Long. Alligator Alley intends to use the leased parcel in order to construct a tourist/ecological park where visitors can observe alligators in their natural habitat. Mrs. Long does not have any ownership interest in Alligator Alley, nor is she involved in the management of the company. Mrs. Long has signed a personal guarantee on a note with her two sons, the proceeds of which will be used to construct improvements on the leased parcel.

Mrs. Long's sons, Brooks and Wesley, plan on sending informational packets for field trips to schools located in Mobile and Baldwin Counties in Alabama, and to schools located in Escambia County, Florida.

Guidance is requested on various issues relating to the facts at hand including, but not limited to, the following: (1) whether there is any limitation on Alligator Alley's ability to provide information packets regarding Alligator Alley to the schools located in Baldwin County; (2) whether there is any limitation on Alligator Alley's ability to send information packets to schools and counties other than Baldwin County; (3) whether the sphere of influence of a

member of the Baldwin County Board of Education includes any area beyond Baldwin County; and (4) whether Alligator Alley can do business with the schools of Baldwin County and derive profits therefrom.

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."

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."

On July 12, 2000, the Commission rendered Advisory Opinion No. 2000-20, which discussed a public official's "sphere of influence." The Commission equated the term "sphere of influence" with a public official's jurisdiction. The Commission asked, "Is that public official in a position to exert influence over a public entity with whom he or she seeks business?" Therefore, as to questions two and three, there are no prohibitions in Alligator Alley providing information packets to schools located outside of Baldwin County, as Mrs. Long's "sphere of influence" does not extend beyond the Baldwin County boundaries.

As relates to questions one and four, there is no prohibition in Alligator Alley providing information packets to schools within Baldwin County and profiting therefrom, provided, Mrs. Long, as a member of the Board, does not use either her position or the influence of her position to obtain business opportunities for her sons' company. In addition, Mrs. Long may not vote, attempt to influence or in any manner participate in any dealings between the Baldwin County

Board of Education and Alligator Alley. Finally, Mrs. Long may not use confidential information obtained by virtue of her service on the Board of Education to assist her sons' business.

Based on the facts as provided and the above law, a member of the Baldwin County Board of Education may lease property to a company owned by her sons, when the sons intend to have a business relationship with the Baldwin County Board of Education; provided,

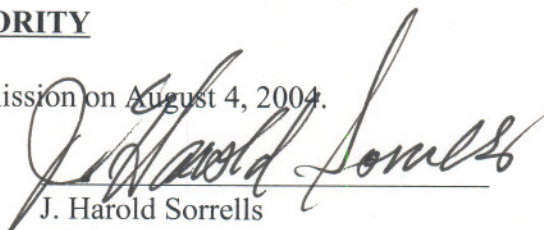
- 1) that the Board member does not use her influence or the mantle of her office to assist her sons in obtaining business from the Baldwin County Board of Education;
- 2) that she does not vote, attempt to influence or in any manner participate in any business dealings between the company and the Baldwin County Board of Education; and finally,
- 3) that she does not use confidential information obtained by virtue of her service on the Board of Education to assist her sons' business.

CONCLUSION

A member of the Baldwin County Board of Education may lease property to a company owned by her sons, when the sons intend to have a business relationship with the Baldwin County Board of Education; provided, that the Board member does not use her influence or the mantle of her office to assist her sons in obtaining business from the Baldwin County Board of Education; that she does not vote, attempt to influence or in any manner participate in any business dealings between the company and the Baldwin County Board of Education; and finally, that she does not use confidential information obtained by virtue of her service on the Board of Education to assist her sons' business.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on August 4, 2004.


J. Harold Sorrells
Chair
Alabama Ethics Commission