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

October 6, 2004

ADVISORY OPINION NO. 2004-20

Ms. Tammy L. Irons
Attorney at Law
The Irons Law Firm
219 North Court Street
Florence, Alabama 35630

Conflict Of Interest/Mayor-Elect, Who Serves On Board Of Directors Of Local Bank, Continuing To Serve On Board After Taking Office As Mayor

The mayor-elect of Florence, Alabama, who serves on the board of directors of First Metro Bank of Florence, may continue to serve on that bank board of directors after officially taking office as mayor on October 4, 2004; provided, that he does not recommend to the city that city funds be deposited in the bank on whose board of directors he serves, or use his influence to see that the funds are deposited in the bank on whose board of directors he serves.

City funds may be deposited in the bank on whose board of directors the mayor of that city serves, after the mayor-elect takes office; provided, that all funds deposited in the bank on whose board of directors the mayor serves including, but not limited to, checking and savings accounts, are done through some form of competitive bid process; and, that a copy of each contract entered into is filed with the Ethics Commission within ten days after having been entered into.

The mayor-elect, who serves as a member of the board of directors of a local bank, may not use confidential information obtained by virtue of his position as mayor, once he takes office, to aid the bank on whose board he serves to be the successful bidder in obtaining city business.

Dear Ms. Irons:

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 the mayor-elect of the City of Florence, Alabama, who serves on the board of directors of First Metro Bank of Florence, continue to serve as a member of the board of directors after he takes office as mayor?

FACTS AND ANALYSIS

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

Bobby Irons was elected the mayor of Florence, Alabama, on August 24, 2004. He will be sworn in as mayor on October 4, 2004. As mayor, his duties will include the general supervision and control of all officers and the affairs of the city, and he has the power to appoint all officers, whose appointments are not otherwise provided for by law. The mayor's position is full-time.

Mayor-Elect Irons has served on the board of directors of First Metro Bank since August 12, 1999. As the director of First Metro Bank, Irons currently receives a director's fee in the amount of $600.00 per month. Irons also owns 500 shares of stock in First Metro Bank, which constitutes less than one percent interest in the bank. Meetings for the board of directors of First Metro Bank are held on the second Thursday of each month at 5:00 p.m.

The City of Florence has done business with First Metro Bank in the past, and could do so in the future. Mayor-Elect Irons desires to continue to serve on the board of directors of First Metro Bank, but does not want to violate any provisions of the Alabama Ethics Law.

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 36-25-1(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 36-25-5(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 36-25-9(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."

The Commission has opined on several occasions in the past that public officials, both elected and appointed, who serve on the board of directors of local banks, may continue to do so, and public funds may be deposited in the bank on whose board of directors they serve; provided, that the public official does not use his official position or influence to recommend that funds be deposited in that bank; that any future deposits of public funds be done through some form of competitive bid process; and, that no confidential information is used to assist the bank in obtaining the city’s business.

Based on the facts as provided and the above law, the mayor-elect of Florence, Alabama, who serves on the board of directors of First Metro Bank of Florence, may continue to serve on that bank board of directors after officially taking office as mayor on October 4, 2004; provided,

1) that he does not recommend to the city that city funds be deposited in the bank on whose board of directors he serves;

2) that he does not use his influence to see that the funds are deposited in the bank on whose board of directors he serves;

3) that all funds deposited in the bank on whose board of directors the mayor serves including, but not limited to, checking and savings accounts, are done through some form of competitive bid process;

4) that a copy of each contract entered into is filed with the Ethics Commission within ten days after having been entered into; and,

5) that he does not use confidential information obtained by virtue of his position as mayor, once he takes office, to aid the bank on whose board he serves to be the successful bidder in obtaining city business.

CONCLUSION

The mayor-elect of Florence, Alabama, who serves on the board of directors of First Metro Bank of Florence, may continue to serve on that bank board of directors after officially taking office as mayor on October 4, 2004; provided, that he does not recommend to the city that city funds be deposited in the bank on whose board of directors he serves, or use his influence to see that the funds are deposited in the bank on whose board of directors he serves.

City funds may be deposited in the bank on whose board of directors the mayor of that city serves, after the mayor-elect takes office; provided, that all funds deposited in the bank on whose board of directors the mayor serves including, but not limited to, checking and savings accounts, are done through some form of competitive bid process; and, that a copy of each contract entered into is filed with the Ethics Commission within ten days after having been entered into.

The mayor-elect, who serves as a member of the board of directors of a local bank, may not use confidential information obtained by virtue of his position as mayor, once he takes office, to aid the bank on whose board he serves to be the successful bidder in obtaining city business.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on October 6, 2004.

Raymond L. Bell, Jr., Esq.
Chair
Alabama Ethics Commission