



STATE OF ALABAMA ETHICS COMMISSION



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ADVISORY OPINION NO. 2004-23

The Honorable Belinda McClantoc
Council Member
Town of Kinsey
5563 Walden Drive
Kinsey, Alabama 36303

Conflict Of Interest/Member Of Town Council, Whose Spouse Is A Corporal With The Police Department, Voting On Issues Pertaining To The Police Department

A member of the Town of Kinsey Town Council may not vote, attempt to influence or otherwise participate in any matters that affect the Town of Kinsey Police Department, as the police department consists of only a Chief of Police and a Corporal, who is the council member's spouse, and every action taken regarding the police department will directly affect the spouse.

Conflict Of Interest/Member Of Town Council, Whose Spouse Is Also The Planning And Zoning Enforcement Officer For The Town, Voting On Issues Brought Forth By The Planning And Zoning Board

A member of the Town of Kinsey Town Council may vote on matters brought forth by the Planning and Zoning Board, when the spouse of the council member, who is also the Planning and Zoning Enforcement Officer for the town, does not receive a personal benefit, and where the matters are routine in affecting zoning issues.

Dear Councilwoman McClantoc:

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 member of the Town of Kinsey Town Council, whose spouse is a Corporal with the town's police department, vote on issues pertaining to the police department, when the police department only has a Chief and a Corporal, who is the spouse of the council member?
- 2) May a member of the Town of Kinsey Town Council, whose spouse is also the Planning and Zoning Enforcement Officer for the town, vote on issues brought forth by the Planning and Zoning Board?

FACTS AND ANALYSIS

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

Belinda McClantoc is a member of the Town of Kinsey Town Council. Her husband is on the police department of the same town. The department consists of a Chief of Police and a Corporal, the Corporal being her husband.

Councilwoman McClantoc states that her husband is also the Planning and Zoning Enforcement Officer for the town. She asks whether or not she can vote on issues that pertain to the police department, other than the issues that would benefit her husband financially or his position, for example, purchasing equipment, training and issues pertaining to all other employees of the police department. She also asks whether she can vote on issues brought forth by the Planning and Zoning Board.

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(23) defines a public employee as:

"(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

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."

The Ethics Law provides that a conflict of interest exists when a public official or a public employee's actions would benefit a family member or himself/herself, in a manner differently than it would affect the entire class to which the individual belongs.

In the facts before the Commission, the class is Police Chief and a Corporal. Therefore, any actions taken by the member of the Council would directly affect her husband, as it a two-member police force.

The Town of Kinsey has a volunteer Planning and Zoning Board. It is not a compensated board in any way. The board reviews all complaints, questions, appeals and sets up ordinances in planning and zoning. Once the Planning and Zoning Board has made a decision, whoever files a grievance can appeal to the town council, which is where Ms. McClantoc would be involved. Her husband is a police officer in the town, as well as the Planning and Zoning Enforcement Officer. He is the first person who deals with complaints or violations. For example, if there is someone who has trash or abandoned vehicles in his or her yard, it is a violation under a Town of Kinsey ordinance. Her husband would inspect the complaint, then he would write the violation or report it to the Planning and Zoning Board, and a notice would be sent to the town and signed by the mayor. Her husband would also have to serve a notice from the town on the individual person. The person can appeal to the Planning and Zoning Board, and then to the town council, where Ms. McClantoc would have to vote on the issue with which her husband was involved. The Planning and Zoning Board is made up of a total of nine members. There are six citizens, one council member, the town clerk and the mayor. Her husband is the Enforcement Officer, but is not a member of the board. There are no other official inspectors, employees or anyone else related to planning and zoning. The town does have a separate volunteer Board of Adjustments, which consists of five citizens. Her husband assists the board on questions, but he is not a member.

As to issues brought forth by the Planning and Zoning Board, if her husband would be directly benefitted by her actions, then she may not vote, attempt to influence or otherwise

participate. However, if the matters brought before the Planning and Zoning Board are merely concerning rezoning issues, the issuance of citations, etc., and there is no personal benefit to the spouse, then she may vote on those matters.

Based on the facts as provided and the above law, a member of the Town of Kinsey Town Council may not vote, attempt to influence or otherwise participate in any matters that affect the Town of Kinsey Police Department, as the police department consists of only a Chief of Police and a Corporal, who is the council member's spouse, and every action taken regarding the police department will directly affect the spouse.

However, a member of the Town of Kinsey Town Council may vote on matters brought forth by the Planning and Zoning Board, when the spouse of the council member, who is also the Planning and Zoning Enforcement Officer for the town, does not receive a personal benefit, and where the matters are routine in affecting zoning issues.

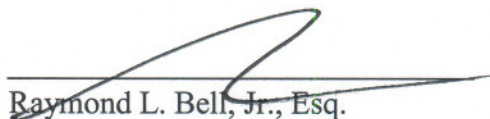
CONCLUSION

A member of the Town of Kinsey Town Council may not vote, attempt to influence or otherwise participate in any matters that affect the Town of Kinsey Police Department, as the police department consists of only a Chief of Police and a Corporal, who is the council member's spouse, and every action taken regarding the police department will directly affect the spouse.

A member of the Town of Kinsey Town Council may vote on matters brought forth by the Planning and Zoning Board, when the spouse of the council member, who is also the Planning and Zoning Enforcement Officer for the town, does not receive a personal benefit, and where the matters are routine in affecting zoning issues.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on December 1, 2004.


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