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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

February 2, 2005

ADVISORY OPINION NO. 2005-02

The Honorable Dwight Tankersley
Mayor, City of Hartselle
200 Sparkman Street, NW
Hartselle, Alabama 35640-2426

Conflict Of Interest/Business Situated On
Property Owned By Mayor Doing Business
With The City

The City of Hartselle may continue to do business with an automotive parts store which leases the land on which it is situated from the Mayor of the City of Hartselle, as the Mayor receives a flat rental amount on a monthly basis, and he has no ownership interests, nor will he profit from the business conducted by the automotive parts store with the City of Hartselle; provided, that the Mayor does not vote, attempt to influence or otherwise participate in any purchases or other matters between the City of Hartselle and the parts store.

Dear Mayor Tankersley:

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 an automotive parts store located on property owned by the Mayor of the City of Hartselle, continue to do business with the city?

FACTS AND ANALYSIS

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

Dwight Tankersley was elected as Mayor of the City of Hartselle, Alabama, in August 2004, and assumed office in October. He owns a certain parcel of real property in Hartselle, upon which is situated an automotive parts retail store and machine shop. Mayor Tankersley formerly operated a business on the premises himself, but sold the business to the new occupants. However, he continues to own the land and receives a monthly lease payment from the current occupants. He has no ownership interest in the current operation of the business, and the lease amount he receives is a flat monthly rate wherein he receives no portion of the income of the business, other than that which is required to pay the flat monthly rental amount.

Prior to Mayor Tankersley assuming office, the City of Hartselle often purchased automotive parts for cars and equipment operated by the City from the business in question. Various department heads would like to continue to do this. Because the purchases of goods and services do not approach the limit for which competitive bidding would be required, these products are purchased strictly by way of purchase order without bidding.

Mayor Tankersley states that the City of Hartselle is a Class 7 municipality. He has been informed by the City Attorney that Section 11-43-12.1, Code of Alabama, 1975, makes certain exceptions to the preclusion against contracting with businesses in which there is an ownership interest by city officials in instances where competitive bidding is involved or where the supplier is the sole vendor of the product. He states that there are other automotive supply houses in Hartselle, so neither the competitive bidding exception, nor the sole vendor exception, would seem to apply in this instance.

The Mayor is concerned whether or not his relationship with this business constitutes a relationship which would preclude the City of Hartselle from making purchases where competitive bidding is not involved.

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 36-25-9(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 fact that the Mayor owns the property on which the business is located, does not make the automotive parts store a business with which he is associated. Therefore, should the parts store be allowed to continue to do business with the City of Hartselle, there would not be a competitive bid requirement.

The only benefit Mayor Tankersley would receive is the monthly rental fee, which is a flat fee under the lease agreement. It is independent and separate from any income or other business conducted by the parts store.

Be that as it may, the Mayor should not vote or participate in any purchases or other matters between the parts store and the city, due to the fact that, hypothetically, the more business the parts store conducts, the more assured the Mayor is of receiving the monthly rental payment.

Based on the facts as presented and the above law, the City of Hartselle may continue to do business with an automotive parts store which leases the land on which it is situated from the Mayor of the City of Hartselle, as the Mayor receives a flat rental amount on a monthly basis, and he has no ownership interest, nor will he profit from the business conducted by the automotive parts store with the City of Hartselle; provided, that the Mayor does not vote, attempt to influence or otherwise participate in any purchases or other matters between the City of Hartselle and the parts store.

CONCLUSION

The City of Hartselle may continue to do business with an automotive parts store which leases the land on which it is situated from the Mayor of the City of Hartselle, as the Mayor receives a flat rental amount on a monthly basis, and he has no ownership interest, nor will he profit from the business conducted by the automotive parts store with the City of Hartselle; provided, that the Mayor does not vote, attempt to influence or otherwise participate in any purchases or other matters between the City of Hartselle and the parts store.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on February 2, 2005.

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