



STATE OF ALABAMA ETHICS COMMISSION



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February 2, 2005

ADVISORY OPINION NO. 2005-03

Mr. Tyrone C. Means, Esq.
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Montgomery, Alabama 36103-5058

Use Of Public Funds/Montgomery County
Commission Purchasing Skybox At
Riverwalk Stadium For Purpose Of
Economic Recruitment

As this is an issue regarding the proper
expenditure of public funds, it is advised
that the Montgomery County Commission
contact the Attorney General's Office.

Conflict Of Interest/Montgomery County
Commission Purchasing Skybox At
Riverwalk Stadium, And The Skybox Being
Used By Members Of The County
Commission For Their Own Personal
Pleasure/Use

Should the Montgomery County
Commission be allowed to purchase a
skybox at Riverwalk Stadium for the
purpose of industrial development, members
of the County Commission who voted to
approve the purchase, may not use the
skybox for their own personal use, as this
would be a use of office for personal gain.

The sitting members of the Montgomery County Commission who approved the purchase of the skybox, may approve the use of the skybox by members of the next seated County Commission; provided, that the use is not continuous in nature; and, that the use of the skybox is made available to all employees of the Montgomery County Commission on an equal basis.

Dear Mr. Means:

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 the Montgomery County Commission purchase a skybox at Riverwalk Stadium for the sole purpose of promoting agricultural, industrial and manufacturing plants, factories and other industries to locate in Montgomery County?
- 2) Would it be inappropriate for any Commissioner to ever use the skybox at Riverwalk Stadium for personal pleasure and/or use, such as taking family members, friends and social acquaintances to the skybox?

FACTS AND ANALYSIS

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

Tyrone C. Means is one of the County Attorneys for Montgomery County, Alabama. He is writing on behalf of the Montgomery County Commission to request an opinion on the following issues:

The City of Montgomery has recently established a new minor league baseball team known as the Montgomery Biscuits. As such, the Commission inquires about the following:

- Issue 1: The purpose of the Montgomery County Commission is to promote economic growth and development throughout the County as prescribed in Alabama Code Section 11-3-11(19), 1975. Thus, would it be appropriate for the Montgomery County Commission to own a skybox at Riverwalk Stadium for the sole purpose of promoting agricultural, industrial and manufacturing plants, factories and other industries to locate in Montgomery County?
- Issue 2: Is whether or not it would be appropriate for any Commissioner to ever use the skybox at Riverwalk Stadium for personal pleasure and/or use, such as taking family members, friends and social acquaintances to the skybox.

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(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."

In August of 1997, the Commission rendered Advisory Opinion No. 97-71, which states:

"It would not violate the Alabama Ethics Law for the City of Citronelle to allow Municipal employees and officials, board employees, and volunteer firemen to play free at the City Golf Course; provided, all City employees and officials are given the same opportunity and it is governed by City policy; and provided further, that the City Council, as policy makers, not vote to allow themselves free use of the golf course during their current term of office, as this would involve a financial gain to themselves, but may vote to allow Council members free use of the golf course effective upon a new Council being seated."

In September of 1998, the Commission rendered Advisory Opinion No. 98-47, which holds that:

"Officers and employees of the Birmingham Parks and Recreation Board may accept tickets to events at Park Board facilities; free parking in the Officials' Lot at Legion Field; free parking at Birmingham Parking Authority facilities; free access to Board operated facilities; and, free golf at Board operated facilities; provided, that the tickets and free parking are made available to all City officers and employees and are governed by a City policy."

"In addition, the policy makers for the City of Birmingham, may not vote or approve the receipt of free parking, etc., for themselves, as this would involve a financial gain to the policy makers."

In the facts before the Commission, the issue of whether or not the County Commission may purchase a skybox is an issue which involves the proper expenditure of public funds. The Montgomery County Commission should contact the Attorney General's Office for an opinion on this issue.

As to issue two, as the Commission has previously opined, the current County Commissioners, who vote to purchase a skybox, may not use the skybox for personal and/or pleasure purposes, as this would be a financial gain to themselves as policymakers. However, they may vote to allow future seated County Commissioners to do so; provided, that there is a county policy; and, that all Montgomery County Commission employees are given the same opportunity for the use of the skybox.

Based on the facts as provided and the above law, as this is an issue of the appropriateness of the expenditure of public funds, it is advised that the Montgomery County Commission contact the Attorney General's Office regarding this issue.

Should the Montgomery County Commission be allowed to purchase a skybox at Riverwalk Stadium for the purpose of industrial development, members of the County Commission who voted to approve the purchase, may not use the skybox, as this would be a use of office for personal gain.

The sitting members of the Montgomery County Commission who approved the purchase of the skybox, may approve the use of the skybox by members of the next seated County Commission; provided, that the use is not continuous in nature; and, that the use of the skybox is made available to all employees of the Montgomery County Commission on an equal basis.

CONCLUSION

As this is an issue regarding the proper expenditure of public funds, it is advised that the Montgomery County Commission contact the Attorney General's Office.

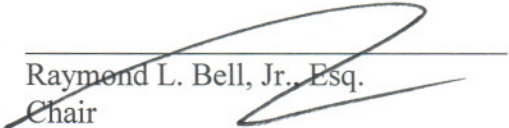
Should the Montgomery County Commission be allowed to purchase a skybox at Riverwalk Stadium for the purpose of industrial development, members of the County Commission who voted to approve the purchase, may not use the skybox for their own personal use, as this would be a use of office for personal gain.

The sitting members of the Montgomery County Commission who approved the purchase of the skybox, may approve the use of the skybox by members of the next seated County Commission; provided, that the use is not continuous in nature; and, that the use of the skybox is made available to all employees of the Montgomery County Commission on an equal basis.

Mr. Tyrone C. Means, Esq.
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AUTHORITY

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



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