



# STATE OF ALABAMA ETHICS COMMISSION



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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](http://www.ethics.alalinc.net)

April 6, 2005

## ADVISORY OPINION NO. 2005-06

Mr. Desmond Wilson  
Ms. Candy Capel  
Partners, Solutions For Rural Communities, Inc./  
Employees, City of Montgomery  
P.O. Box 5012  
Montgomery, Alabama 36104

Conflict Of Interest/Montgomery City  
Employees Responsible For The  
Administration Of Federal Funds That The  
City Receives From The U.S. Department  
Of Housing And Urban Development  
(HUD) Performing Grant, Proposal  
Development Or Writing Services For  
Organizations, Communities, Towns  
And/Or Cities Outside The City Of  
Montgomery Who Are Seeking Federal Or  
Private Funding

Employees of the City of Montgomery, who  
are responsible for the administration of  
federal funds that the city receives from  
HUD, may perform grant, proposal  
development and/or writing services for  
organizations, communities, towns and/or  
cities outside the City of Montgomery who  
are seeking federal or private funding, but  
may not do so for those entities within their  
jurisdiction who have, or may in the future  
apply for federal funds through their office;  
provided, that all activities relating to these  
services are done on their own time, whether  
it is after-hours, evenings, weekends, etc.;  
and, that there is no use of public equipment,  
facilities, time, materials, human labor or

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other public property under their discretion or control to assist them in either obtaining or performing the grant, proposal development and/or writing services.

Dear Mr. Wilson and Ms. Capel:

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) Can they perform grant or proposal development or writing services only for organizations, communities, towns, and/or cities outside of the City of Montgomery who are seeking federal or private funding?
- 2) Can they perform grant or proposal writing services only for organizations and/or other entities within the city limits for federal (HUD and non-HUD) or private funding who do not currently receive HUD funding through their office?
- 3) Can they perform grant or proposal development or writing services only for organizations and/or other entities within the city limits for non-HUD federal or private funding who currently receive federal (HUD) funding through their office?
- 4) Can they perform grant consulting, grant management or project management services for organizations, communities, towns, and/or cities outside of the City of Montgomery?
- 5) Can they perform grant consulting, grant management or project management services for organizations and/or other entities within the City of Montgomery who are not currently subrecipients of their HUD funds?
- 6) Can they perform grant consulting, grant management or project management services for organizations and/or other entities within the City of Montgomery who are currently subrecipients of their HUD funds?
- 7) Can they perform economic development or marketing research services for organizations, communities, towns, and/or cities outside of the City of Montgomery?

- 8) Can they perform economic development or marketing research services for organizations and/or other entities within the City of Montgomery who are not currently subrecipients of their HUD funds?
- 9) Can they perform economic development or marketing research services for organizations and/or other entities within the City of Montgomery who are currently subrecipients of their HUD funds?

### **FACTS AND ANALYSIS**

Desmond Wilson and Candy Capel are employees of the City of Montgomery, employed in the division responsible for the administration of federal funds the City of Montgomery receives from the U.S. Department of Housing and Urban Development (HUD). They are not required to write and submit a grant application each year for these funds. Rather, as an entitlement jurisdiction, the city (through their division) submits an action plan to HUD each year describing its planned activities for the funds. These activities are taken from approved applications submitted to their office by non-profit organizations and other entities for community and citywide projects. Upon approval of the Plan by HUD, the funds are released to the city. The monies are then awarded by their office to the non-profits and others, and the projects are subsequently monitored by their division.

Mr. Wilson and Ms. Capel also own a company called Solutions For Rural Communities, Inc. This company was formed in 2003. They deliberately chose this name because their intent is to work with entities and organizations outside of the City of Montgomery in order to avoid instances of conflicts of interest. However, they have been approached by organizations within the city limits requesting their assistance. Some of these organizations receive federal funding through their office and others do not. Their articles of incorporation indicate that their company provides grant consulting, grant writing, grant management, proposal development, proposal writing, project management, economic development and marketing research services. They have set out nine different questions regarding their endeavors.

All of the questions generally ask whether or not they are limited in performing their outside grant or proposal writing services with entities outside their jurisdiction of the City of Montgomery. Their questions further ask whether or not they may write grant proposals for entities located within the City of Montgomery who are not currently recipients of HUD funding, but may be in the future.

The Alabama Ethics Law, Section 36-25-1(23), Code of Alabama, 1975, 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 36-25-1(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 36-25-5(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 36-25-2(b) states:

"(b) An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided."

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."

The Ethics Law allows public officials and public employees to have outside business interests, provided a conflict of interest does not exist.

In the facts before the Commission, should Mr. Wilson and Ms. Capel write grants or perform other services for entities within their jurisdiction as employees of the City of Montgomery, who have or may in the future, apply for federal funds, a conflict of interest would exist.

Therefore, it would be a conflict of interest for them to perform grant or proposal writing services for entities located within their jurisdiction, that they may be called upon to deal with in their capacity as city employees.

On the other hand, it would not be a conflict of interest for them to perform grant or proposal writing services for entities located outside the City of Montgomery, which are beyond their jurisdiction; provided, that all activities relating to these services are done on their own time, whether it is after-hours, evenings, weekends, etc.

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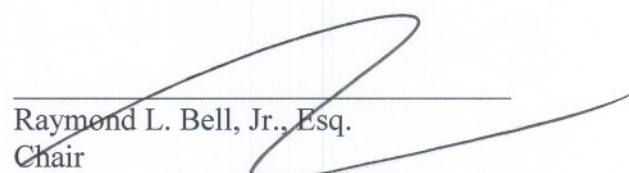
Based on the facts as provided and the above law, employees of the City of Montgomery, who are responsible for the administration of federal funds that the city receives from HUD, may perform grant, proposal development and/or writing services for organizations, communities, towns and/or cities outside the City of Montgomery who are seeking federal or private funding, but may not do so for those entities within their jurisdiction who have, or may in the future apply for federal funds through their office; provided, that all activities relating to these services are done on their own time, whether it is after-hours, evenings, weekends, etc.; and, that there is no use of public equipment, facilities, time, materials, human labor or other public property under their discretion or control to assist them in either obtaining or performing the grant, proposal development and/or writing services.

### CONCLUSION

Employees of the City of Montgomery, who are responsible for the administration of federal funds that the city receives from HUD, may perform grant, proposal development and/or writing services for organizations, communities, towns and/or cities outside the City of Montgomery who are seeking federal or private funding, but may not do so for those entities within their jurisdiction who have, or may in the future apply for federal funds through their office; provided, that all activities relating to these services are done on their own time, whether it is after-hours, evenings, weekends, etc.; and, that there is no use of public equipment, facilities, time, materials, human labor or other public property under their discretion or control to assist them in either obtaining or performing the grant, proposal development and/or writing services.

### AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on April 6, 2005.



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