Use Of Office For Personal Gain/City Councilperson, Employed By The Public School System, Or Who Has Spouse Employed By The Public School System, Voting To Authorize A Feasibility Study On The Issue Of Forming A City School District

A member of the City of Daphne City Council, employed by the public school system, or who has a spouse employed by the public school system, may vote to authorize a Feasibility Study on whether or not to form a city school district, as there is no opportunity for personal gain to be had by the councilperson or the spouse of the councilperson.

A member of the City of Daphne City Council, who is employed by the public school system, or who has a spouse employed by the public school system, may vote to create a city school district; provided, that the councilperson or the spouse of the councilperson employed by the school system, is not affected nor receives any benefit different than that received by all other employees of the newly formed city school district.
Dear Mr. Fleming:

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) Is a Daphne City Councilperson, employed as a public school teacher in a public school located in Daphne, Alabama, prohibited from voting on whether or not to authorize a Feasibility Study to be performed on behalf of the City to gather information and advise the City and its Council on whether or not forming a City School District is feasible? Concerning the vote on this study, is this Councilperson allowed to discuss and voice his/her opinion on the ultimate issue of whether or not the City School District should be approved?

2) Is a Daphne City Councilperson, whose spouse is employed as an Assistant Principal at a public school located in Daphne, Alabama, prohibited from voting on whether or not to authorize a Feasibility Study to be performed on behalf of the City to gather information, and advise the City and its Council on whether or not forming a City School District is feasible? Concerning the vote on this study, is this Councilperson allowed to discuss and voice his/her opinion on the ultimate issue of whether or not the City School District should be approved?

3) Would either of the above described individuals be prohibited from participating in a vote on the ultimate issue of whether or not to form a City School District? If so, are there any restrictions on participating in “pre-vote” discussions of whether or not to approve or disapprove the City School District?

**FACTS AND ANALYSIS**

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

The law firm of Ross & Jordan, P.C. represents the City of Daphne, Alabama. Of their seven council members, one is employed as a public school teacher at a public school located in Daphne, Alabama, and another is married to an Assistant Principal in one of the public schools located in Daphne, Alabama. The City Council was recently presented a request by a group of citizens to consider leaving the Baldwin County School System and forming a City School District. An initial request was made by a concerned citizens’ group for the Council to obtain a
"Feasibility Study" from a professional consultant to gather information of various types to aid the Council in deciding whether or not a school district should be formed. The City Council may soon vote on whether to employ the services of a professional consultant to conduct such a Feasibility Study. The cost of the Study is anticipated to be in the approximate range of $5,000 to $15,000.

The firm has reviewed prior Ethics opinions, but has not received clear guidance from those opinions and, therefore, requests this opinion.

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(11) defines a family member of the public employee as:

“(11) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the public employee.”

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 36-25-1(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 36-25-9(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.”

On September 5, 1985, the Supreme Court of Alabama rendered OPINION OF THE JUSTICES, NO. 317. The question propounded related to whether or not Legislators, who were employed and paid by the public education system, or who had spouses employed in the education system, could constitutionally vote on a bill granting a pay raise for public education employees. The Supreme Court stated that:
“Legislators employed and paid by the public education system, or those whose spouses were so employed and paid, could constitutionally vote on a bill granting a pay raise for public education system employees, so long as the bill did not affect any such Legislator in a way different from the way it affected the other members of the class to which he or she belonged.”

Likewise, the definition of a conflict of interest contained in the Alabama Ethics Law specifies that a conflict of interest would exist if the person or his or her family member is affected differently from the manner in which all other members of the class to which he or she belongs were affected.

In the facts before the Commission, as there would be no personal gain on the part of anyone, it would not violate the Alabama Ethics Law for a city council member, employed as a school teacher, or a city council member whose spouse is an Assistant Principal, to vote to authorize a Feasibility Study.

In addition, it would not violate the Ethics Law for these individuals to vote on establishing a separate school system; provided, that the city council member, employed as a school teacher, and the city council member whose spouse is employed as an Assistant Principal, are not affected any differently than all other members of the class to which they belong are affected, that class consisting of all employees of the new school system.

Based on the facts as provided and the above law, a member of the City of Daphne City Council, employed by the public school system, or who has a spouse employed by the public school system, may vote to authorize a Feasibility Study on whether or not to form a city school district, as there is no opportunity for personal gain to be had by the councilperson or the spouse of the councilperson.

A member of the City of Daphne City Council, who is employed by the public school system, or who has a spouse employed by the public school system, may vote to create a city school district; provided, that the councilperson or the spouse of the councilperson employed by the school system, is not affected nor receives any benefit different than that received by all other employees of the newly formed city school district.

CONCLUSION

A member of the City of Daphne City Council, employed by the public school system, or who has a spouse employed by the public school system, may vote to authorize a Feasibility Study on whether or not to form a city school district, as there is no opportunity for personal gain to be had by the councilperson or the spouse of the councilperson.
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**AUTHORITY**

By 4-0 vote of the Alabama Ethics Commission on June 1, 2005.

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