



COMMISSIONERS

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Nancy Edwards Eldridge, Vice-Chairman
John H. Cooper, Esq.
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Michael K.K. Choy, Esq.

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

December 7, 2005

ADVISORY OPINION NO. 2005-34

Mr. Mark Culver
Chairman
Houston County Commission
306 Montezuma Avenue
Dothan, Alabama 36303

Conflict Of Interest/Chairman Of County
Commission Accepting Employment With
Local Chamber Of Commerce

The Chairman of the Houston County
Commission may accept employment as
Executive Director with the Dothan Area
Chamber of Commerce, as the County
Commission does not provide funding to, or
otherwise oversee the Dothan Area Chamber
of Commerce.

The Chairman of the Houston County
Commission may accept a job as Executive
Director with the Dothan Area Chamber of
Commerce, when the Chamber of
Commerce shares office space with a
separate entity, Dothan By Design, which
contracts with the County Commission for
services related to economic development,
but has no other interrelation/interaction
with the Chamber of Commerce.

Should a matter involving the Chamber of
Commerce come before the County
Commission, the Chairman of the County
Commission employed as Executive
Director of the Chamber of Commerce must

refrain from voting, attempting to influence or otherwise participating in the matter in his position as Chairman of the County Commission, nor may he interact with the County Commission or otherwise represent the Chamber on the issue in his position as Executive Director of the Chamber of Commerce.

The Chairman of the Houston County Commission, who serves on the Oversight Board of Dothan By Design, may not, while serving as a member of the Houston County Commission, vote, attempt to influence or otherwise participate in any budget allocations or other contractual matters between the County and Dothan By Design, as his service on the oversight body makes Dothan By Design a business with which he is associated.

Dear Mr. Culver:

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

Can the Chairman of the Houston County Commission accept a job as Executive Director of the Dothan Area Chamber of Commerce, in light of the fact that the Commission provides no funding to the Dothan Area Chamber of Commerce, but does provide an annual allocation to a separate but related entity, Dothan By Design, to provide industrial recruitment for the County?

FACTS AND ANALYSIS

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

More than ten years ago, the Houston County Commission, in conjunction with the City of Dothan and business community, was asked to establish a partnership to handle industrial

recruitment activities for the city and county. The partnership was established and is, today, known as Dothan By Design. The city and county, along with many businesses, annually provide funding to this effort. The agreement between all parties involved in the process was to commit funding for five years and then renew the agreement for an additional five years and continue this process into the future. Understanding that one county commission cannot obligate the next, it was agreed in principle that the city, county and local business community would enter into this arrangement to pursue economic development for the community. The operation of Dothan By Design is housed at the Dothan Area Chamber of Commerce. Dothan By Design funds and financial records are maintained separately from the Chamber. Oversight and management of Dothan By Design are provided by a separate body, which operates independently from the Dothan Area Chamber of Commerce Board. The membership of this body is comprised of representatives of the businesses that support Dothan By Design and the Chairman and Administrator of the Houston County Commission and the Mayor and City Manager of the City of Dothan. The Houston County Commission does not have an appointment to the board.

Dothan By Design pays its pro-rata share of the cost of operating and maintaining the building that houses the Chamber of Commerce. The salaries of the employees who participate in Dothan By Design activities are paid out of Dothan By Design funds. The position of Executive Director of the Chamber of Commerce is funded exclusively from the operating budget of the Chamber of Commerce and not from any funds held by Dothan By Design. The revenues of the Chamber of Commerce that come from the membership dues of the members are kept separately.

The County allocates money to Dothan By Design every year as part of the budget approved by the Houston County Commission. The County Commission does not provide funding to the Dothan Chamber of Commerce. The Commission holds budget hearings at which the four district Commissioners discuss requests for funding. The budget is then voted on in an open commission meeting. The Chairman of the Houston County Commission presides over the commission meeting at which the budget is approved, but does not vote on the budget unless there is a tie, which has never happened on a budget vote. Therefore, Mr. Culver, while serving as Chairman of the Houston County Commission, has never voted on a budgetary allocation to Dothan By Design.

The Chamber Executive Director position is responsible for directing Chamber staff, implementing the program of work approved by the Chamber Board, developing the budget, and working as the contact and liaison with the media and governmental entities. The position reports to the Chamber Board and is funded exclusively with Chamber funds. It is an existing position that has been vacant for several months.

Mr. Culver states that he understands that, should the Commission Chairman fill the position, there could be no contact with the County Commission for a period of two years. (The proper interpretation is that Mr. Culver may not have contact with the County Commission while employed as Executive Director of the Chamber of Commerce, and simultaneously serving as Chairman of the Houston County Commission and, for an additional period of two years after his service on the County Commission ends.) However, he requests this opinion because Dothan By Design occupies the same building as the Dothan Chamber of Commerce, shares many of the same goals as the Dothan Chamber of Commerce, and receives funding from the Houston County Commission.

On further inquiry, the missions of the Dothan Chamber of Commerce and Dothan By Design are different. The Chamber of Commerce is a membership and dues-driven organization, while Dothan By Design is driven by voluntary contributions by private business and government given to recruit and expand business and industry. Dothan By Design contracts with Dothan and Houston County for services related to economic development. The County contributes to Dothan By Design for these services but does not contribute to the Chamber nor pay dues as a member. The two programs are audited separately and jointly because, for federal tax purposes, the two are combined under one 401c6 status. Dothan By Design has a Chairman each year as does the Chamber of Commerce and each have separate oversight bodies. The County Chairman and Administrator serve on Dothan By Design oversight but are specifically precluded from serving on Chamber oversight. The Chamber's main focus is community development while Dothan By Design is strictly focused on economic development. The President of the Chamber is the head of economic development in the community and is paid 100% out of Dothan By Design funds. The Executive Director, the position in question, is paid 100% out of Chamber funds and is responsible for Chamber activities and management. The Executive Director position is in no way funded or supported by the financial contributions made by the Houston County Commission to Dothan By Design.

Dothan By Design does not make contributions to the Chamber and only shares costs in projects common to the missions of both entities.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24), defines a public official as:

“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 36-25-1(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 36-25-5(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.”

Section 36-25-2(b) in pertinent part states:

“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.”

The Ethics Law provides that public officials and public employees have the same business opportunities as other members of the general public, provided a conflict of interest does not exist. And further, in those situations where there is a potential conflict of interest, that certain guidelines be met.

In the facts before the Commission, it would not be a conflict of interest or prohibited by the Ethics Law for the Chairman of the Houston County Commission to accept employment as the Executive Director of the Dothan Area Chamber of Commerce, as the County Commission does not fund or otherwise oversee the activities of the Chamber of Commerce.

In addition, the fact that the County Commission provides funding to Dothan By Design, which shares office space with the Chamber of Commerce, would not create a conflict so as to prohibit the Chairman from accepting the position.

However, should a matter arise involving the Chamber of Commerce and the County Commission, the County Commissioner may not vote, attempt to influence or otherwise participate in the matter while serving as Chairman of the County Commission, nor may he represent or interact with the County Commission on behalf of the Chamber of Commerce.

While the question was not asked, the following issue should be addressed so as to preclude any future problems.

On May 7, 2003, the Commission rendered Advisory Opinion No. 2003-25, which held that:

“The Mayor and/or members of the Saraland City Council may not vote, attempt to influence or otherwise participate in any votes to appropriate funds to, or contract with, organizations on whose Boards of Directors they sit, as these organizations are businesses with which they are associated.”

The fact that the Chairman of the Houston County Commission, as well as the County Administrator, serve on the oversight body for Dothan By Design, makes Dothan By Design a

business with which they are associated, as defined by the Alabama Ethics Law. The Ethics Law prohibits public officials and public employees from using their position in a manner that would provide a personal benefit to themselves, a member of their family or a **business with which they are associated**.

Due to this fact, the Chairman of the Houston County Commission must abstain from any and all participation and voting in any budgetary matters or other contractual matters between the County Commission and Dothan By Design.

Based on the facts as provided and the above law, the Chairman of the Houston County Commission may accept employment as Executive Director with the Dothan Area Chamber of Commerce, as the County Commission does not provide funding to, or otherwise oversee the Dothan Area Chamber of Commerce.

Further, the Chairman of the Houston County Commission may accept a job as Executive Director with the Dothan Area Chamber of Commerce, when the Chamber of Commerce shares office space with a separate entity, Dothan By Design, which contracts with the County Commission for services related to economic development, but has no other interrelation/interaction with the Chamber of Commerce.

In addition, should a matter involving the Chamber of Commerce come before the County Commission, the Chairman of the County Commission employed as Executive Director of the Chamber of Commerce must refrain from voting, attempting to influence or otherwise participating in the matter in his position as Chairman of the County Commission, nor may he interact with the County Commission or otherwise represent the Chamber on the issue in his position as Executive Director of the Chamber of Commerce.

Finally, the Chairman of the Houston County Commission, who serves on the Oversight Board of Dothan By Design, may not, while serving as a member of the Houston County Commission, vote, attempt to influence or otherwise participate in any budget allocations or other contractual matters between the County and Dothan By Design, as his service on the oversight body makes Dothan By Design a business with which he is associated.

CONCLUSION

The Chairman of the Houston County Commission may accept employment as Executive Director with the Dothan Area Chamber of Commerce, as the County Commission does not provide funding to, or otherwise oversee the Dothan Area Chamber of Commerce.

Mr. Mark Culver
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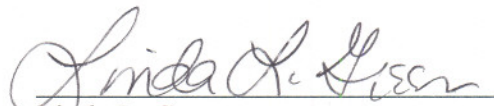
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Should a matter involving the Chamber of Commerce come before the County Commission, the Chairman of the County Commission employed as Executive Director of the Chamber of Commerce must refrain from voting, attempting to influence or otherwise participating in the matter in his position as Chairman of the County Commission, nor may he interact with the County Commission or otherwise represent the Chamber on the issue in his position as Executive Director of the Chamber of Commerce.

The Chairman of the Houston County Commission, who serves on the Oversight Board of Dothan By Design, may not, while serving as a member of the Houston County Commission, vote, attempt to influence or otherwise participate in any budget allocations or other contractual matters between the County and Dothan By Design, as his service on the oversight body makes Dothan By Design a business with which he is associated.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on December 7, 2005.



Linda L. Green

Chair

Alabama Ethics Commission