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ADVISORY OPINION NO. 2006-17

Ms. Renee D. Kirby
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Conflict Of Interest/City Council Member,
Who Is A Former Member Of The Joint
Powers Authority (JPA), Purchasing
Property From The Joint Powers Authority

A member of the Anniston City Council, who is a former member of the Joint Powers Authority (JPA), and who may be reappointed to the JPA in the future, may purchase property from the JPA; provided, that the property has been properly advertised; that the opportunity to purchase the property is available to the general public; and, that no confidential information obtained in the course of his service as a member of the Anniston City Council is used to assist him in making the purchase.

The Mayor and members of the Anniston City Council who are members of the JPA Board, may vote on the transaction involving the City Councilman, as they do not have a personal interest in the transaction.

Dear Ms. Kirby:

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 a member of the Anniston City Council, who is a former member of the Joint Powers Authority (JPA) Board of Directors, and who could become a member of the JPA Board of Directors again in the future, purchase property from the JPA?
- 2) If a member of the Anniston City Council, who is a former member and a potential future member of the JPA Board of Directors is able to purchase property from the JPA, can the Mayor and members of the Anniston City Council for the City of Anniston who are on the JPA Board, vote on the project?

FACTS AND ANALYSIS

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

Jeff Fink has been an Anniston City Councilman since October of 2000. From October 1, 2001 until October 14, 2003, Mr. Fink served as a Board member for the Joint Powers Authority (JPA). The JPA is a federally-recognized local redevelopment authority for Ft. McClellan, which has the obligation to oversee and implement the civilian reuse of Ft. McClellan.

The JPA consists of nine members. The Anniston City Council appoints two members. The Calhoun County Commission appoints two members. The Mayor of the City of Anniston always serves on the JPA, as well as a member of the State House of Representatives. There is one non-governmental representative on the JPA, as well as a selection made by the Council of Mayors.

The City of Anniston names new members to the Board every two years. The current members were named by the City of Anniston in October of 2005.

The property which Mr. Fink is interested in purchasing is known as part of the "3700 area." The entire 3700 area was originally planned for demolition. On February 21, 2006, the JPA Board of Directors voted to remove the 3700 area from the demolition list and place it back on the market. The next stage in the advertisement process is a quarterly general advertisement in the *Anniston Star*, seeking proposals for any property at McClellan that is currently available for redevelopment. This advertisement does not make reference to any property in particular. The advertisement ran on May 7, 2006, and Mr. Fink's proposal was received on May 25, 2006.

Mr. Fink's proposal was initially presented to the JPA staff before being considered by the JPA Committee, as is the standard procedure for all offers to purchase property at McClellan. In June 2006, the JPA Board of Directors tabled Mr. Fink's proposal pending this Advisory Opinion.

The offer made by Mr. Fink was the only offer received on this property and considered by the JPA Board of Directors up until the time the Board voted to seek an Advisory Opinion. Since that time, the JPA staff received another offer on the property. This offer was mentioned to the JPA Marketing Committee. The Marketing Committee has decided not to consider this new offer until after the Advisory Opinion has been received.

Mr. Fink had no opportunity to purchase the property that was not available to the public-at-large. He did not know about the availability of the property until the May 7th advertisement ran and, as a member of the City Council, he was not in a position to know of the sale prior to its being advertised.

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 36-25-8 states:

“No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business.”

The Commission has addressed this issue on several occasions, and has consistently held that a public official may purchase property from a public entity with which they may have some relationship, provided:

- 1) that the property has been properly advertised;
- 2) that the opportunity to purchase the property is available to the general public; and,
- 3) that no confidential information obtained in the course of the public official’s service is used to assist him or her in becoming the successful purchaser.

In addition, depending on the relationship between the public official and the entity, the Commission has ordered an independent appraisal be done. Due to the fact that Mr. Fink is not currently affiliated with the Joint Powers Authority, there is no need for an independent appraisal, as he is not in a position to influence the transaction.

Based on the information received, the fact that Mr. Fink used to be a member of the JPA Board, and may, in the future, again become a member of the JPA Board, does not impact on this opinion. What the Commission must look at is Mr. Fink’s status at the time the transaction takes place, and whether or not he is in a position to influence that transaction.

Based on the facts as provided and the above law, a City Council member who is a former member of the JPA, may purchase property from the JPA; provided, that the property has been properly advertised; that the opportunity to purchase the property is available to the general

public; and, that no confidential information obtained in the course of the Council member's service is used to assist him in becoming the successful purchaser.

In addition, there is nothing in the Ethics Law that would prohibit the Mayor and members of the Anniston City Council who are JPA Board members, from voting on this transaction, as they have no personal interest, or possible benefit, in the matter.

CONCLUSION

A member of the Anniston City Council, who is a former member of the Joint Powers Authority (JPA), and who may be reappointed to the JPA in the future, may purchase property from the JPA; provided, that the property has been properly advertised; that the opportunity to purchase the property is available to the general public; and, that no confidential information obtained in the course of his service as a member of the Anniston City Council is used to assist him in making the purchase.

The Mayor and members of the Anniston City Council who are members of the JPA Board, may vote on the transaction involving the City Councilman, as they do not have a personal interest in the transaction.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on August 2, 2006.



Linda L. Green

Chair

Alabama Ethics Commission