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October 4, 2006

ADVISORY OPINION NO. 2006-18

Ms. Dewandee K. Neyman
Newly-elected Cherokee County
Board of Education Member/
Night School Tutor
3505 County Road 47
Fort Payne, Alabama 35967

Conflict Of Interest/Newly-Elected Member
Of County Board Of Education Continuing
To Serve As A Night School Tutor For The
School System Subsequent To Her Taking
Her Seat On The Board, When The Night
School Is Funded Through An Indian
Education Grant Administered By The
Board Of Education

A newly-elected member of the Cherokee
County Board of Education may continue to
serve as a night school tutor for the school
system subsequent to her taking her seat on
the board; provided, the conditions of her
employment as a night school tutor do not
change upon her taking her seat; and, that
she not vote, attempt to influence, or in any
way participate in any board actions
affecting the night school program or the
distribution of the grant used to fund the
night school program that affect her
differently than all other night school tutors.

Dear Ms. Neyman:

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

May a newly-elected member of the Cherokee County Board of Education, who serves as a night school tutor for the school system, continue to serve in that capacity after her election to the board?

FACTS AND ANALYSIS

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

Dewandee K. Neyman has recently been elected to the Cherokee County Board of Education. She takes office in November 2006.

Ms. Neyman retired from teaching in 2005, after having taught in Cherokee County schools for 31 years. Since 2000, she has been a night school tutor for the school system. The night school program is funded through an Indian Education Grant, with the money being distributed through the Board of Education.

Upon her taking office, she would like to continue as a night school tutor.

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.”

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.”

The Commission has addressed similar situations in the past, more specifically, Advisory Opinions Nos. 97-04 and 97-05, both rendered on January 8, 1997. Those opinions state:

“The Town of Fairview may hire the daughter of a Town Council member to manage the Municipal Swimming Pool; provided, the Council member did not vote, attempt to influence, or otherwise participate in the hiring of her daughter; and that the Council member did not provide any confidential information gained in the course of her service on the Town Council to assist her daughter in gaining the employment; and further, based on the fact that the daughter had, in years past,

managed the facility prior to her mother becoming a member of the Town Council, and did not use her position to obtain the employment.”

“A member of the Fayette, Alabama City Council may serve as a referee for the City of Fayette’s Parks and Recreation Board Winter Basketball League and receive compensation in the amount of \$15.00 per game; provided, he did not use his position as a member of the City Council to obtain the employment; that he did not use confidential information obtained in the course of his service on the City Council in assisting him in obtaining the employment; that his future vote on appropriations to the Parks and Recreation Board not be contingent on his continued service as a referee; and further, based on the fact that he had served as a referee prior to his election as a City Council member, and did not use his position to obtain the employment.”

Critical to those opinions, as well as the request before the Commission, is the fact that in all these situations the individual interested in the part-time employment was already serving in that capacity prior to his or her family member, or himself/herself, being elected to public office.

In the facts before the Commission, Ms. Neyman has been serving as a night school tutor for approximately six years.

The fact that Ms. Neyman served as a night school tutor prior to her being elected to the Board of Education, would allow Ms. Neyman to serve in that capacity; provided:

- 1) that the status quo is maintained; and,
- 2) that she does not vote, attempt to influence or in any way participate in any matters affecting the night school program, where her employment as a night school tutor would be affected differently than all other individuals similarly employed.

Based on the facts as provided and the above law, a newly-elected member of the Cherokee County Board of Education may continue to serve as a night school tutor for the school system subsequent to her taking her seat on the board; provided, the conditions of her employment as a night school tutor do not change upon her taking her seat; and, that she not vote, attempt to influence, or in any way participate in any board actions affecting the night school program or the distribution of the grant used to fund the night school program that affect her differently than all other night school tutors.

CONCLUSION

A newly-elected member of the Cherokee County Board of Education may continue to serve as a night school tutor for the school system subsequent to her taking her seat on the board; provided, the conditions of her employment as a night school tutor do not change upon her taking her seat; and, that she not vote, attempt to influence, or in any way participate in any board actions affecting the night school program or the distribution of the grant used to fund the night school program that affect her differently than all other night school tutors.

AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on October 4, 2006.


Nancy Edwards Eldridge
Chair
Alabama Ethics Commission