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**ADVISORY OPINION NO. 2006-22**

Mr. Albert Lipscomb  
Chairman  
Baldwin County Commission  
312 Courthouse Square, Suite 12  
Bay Minette, Alabama 36507

Conflict Of Interest/Member Of Baldwin County Commission Who, By Virtue Of His Position, Serves On The South Alabama Regional Planning Commission (SARPC), Voting As A Member Of SARPC On Matters Pertaining To SARPC Programs And Projects Involving Baldwin County

A member of the Baldwin County Commission who, by virtue of his position on the Commission, serves as a member of the South Alabama Regional Planning Commission (SARPC), may, as a member of SARPC, including membership on SARPC's executive committee, vote on matters pertaining to SARPC programs and projects involving Baldwin County, as SARPC was formed to further the interests of its member entities, and the Commissioner's participation as a member of SARPC, as well as his membership on SARPC's executive committee, furthers the interest of the Baldwin County Commission.

Dear Mr. Lipscomb:

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 member of the Baldwin County Commission who, by virtue of his position on the Commission, serves as a member of the South Alabama Regional Planning Commission (SARPC), vote, as a member of SARPC, on matters pertaining to SARPC programs and projects involving Baldwin County?

### **FACTS AND ANALYSIS**

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

The South Alabama Regional Planning Commission (SARPC) was established by Section 11-85-50 et seq., Code of Alabama, 1975. SARPC is composed of representatives of all governmental agencies within the boundaries designated for the Regional Planning and Development Commission. Section 11-85-56, in setting out the general powers and duties of Regional Planning and Development Commissions, allows SARPC to:

“Carry on continuous, comprehensive planning for the region, assessing needs, resources, and development opportunities and formulating goals, objectives, policies, and standards to guide physical, economic, and human resource development.”

In addition, the section allows SARPC to:

“Provide planning and technical assistance to governmental units and planning and development agencies within the region . . .”

Baldwin County is one of the local government members of SARPC, and at least one of the four members of the Baldwin County Commission is required to serve on SARPC as a representative member. Traditionally, a Baldwin County Commissioner has been elected to SARPC’s Executive Committee.

There are continuous and ongoing financial and contractual relationships between the Baldwin County Commission and SARPC, and these relationships may be affected by the vote of either a Baldwin County Commissioner or an SARPC Executive Committee member.

The Baldwin County Commission requested this opinion through Resolution No. 2007-21, however, details and the actual facts were obtained through previous correspondence with Mr. Russell J. Wimberly of the South Alabama Regional Planning Commission and various other involved individuals.

The issue first arose sometime back when a member of the Baldwin County Commission who was serving on SARPC, resigned his position on SARPC because of the perceived conflict of interest, as SARPC, according to the definition contained in the Ethics Law, is a business with which he was associated.

The issue was further exacerbated by Advisory Opinion No. 2003-25, which stated 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.”

That Advisory Opinion related to the public official’s service on entities such as the Chamber of Commerce, Red Cross, United Way, Friends of the Animal Shelter, etc., and whether or not, as public officials, they could vote or be involved in matters that affected those not-for-profit entities.

In Advisory Opinion No. 2003-25, an area of consideration was that while these entities were non-profit organizations, due to the fact that these public officials served on their boards (making the board a business with which they were associated), any official action they took as elected city officials provided a benefit to a business with which they were associated, and that benefit was not a benefit in any way related to the City of Saraland, nor did it directly further the interests of the Saraland City Council.

The issue in this scenario is, who receives the benefit of the public official’s action? Is the benefit solely to the “business with which associated” or is a benefit received by the public entity on which the public official serves?

The applicable Code sections are as follows:

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 36-25-9(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 specific Code section applicable to this opinion request is Section 36-25-1(2), which defines a business with which the person is associated. That section states:

“(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.”

The Ethics Law prohibits the use of one’s public office for the personal benefit of either oneself, one’s family member or a business with which one is associated. By way of example, a city council member who serves on the board of a non-profit organization, may not vote, attempt to influence or otherwise participate in any issues coming before the city council that affect that

non-profit entity, as the entity is a business with which he or she is associated. In addition, in this scenario, any benefit accruing to the non-profit organization does not necessarily further any governmental obligations or interests.

While SARPC is technically a business with which he is associated, for purposes of this opinion and the applicability of the above definition, one has to inquire as to whose interests are being furthered by the County Commission member's participation in SARPC, and where and to whom does any benefit accrue.

The South Alabama Regional Planning Commission was formed to further the interests of its member organizations, all of which are governmental entities. In effect, SARPC serves as an extension of its member organizations, therefore, serving as an extension of the Baldwin County Commission. Any votes taken by members of SARPC further the interests of the various member organizations. As relates to the Baldwin County Commissioner, any action he or she takes as a member of SARPC ultimately returns a benefit to the Baldwin County Commission and Baldwin County generally, and not to a separate "business with which he or she is associated," whose interests would most probably differ from those of the Baldwin County Commission.

Based on the facts as provided and the above law, a member of the Baldwin County Commission who, by virtue of his position on the Commission, serves as a member of the South Alabama Regional Planning Commission (SARPC), may, as a member of SARPC, including membership on SARPC's executive committee, vote on matters pertaining to SARPC programs and projects involving Baldwin County, as SARPC was formed to further the interests of its member entities, and the Commissioner's participation as a member of SARPC, as well as his membership on SARPC's executive committee, furthers the interest of the Baldwin County Commission.

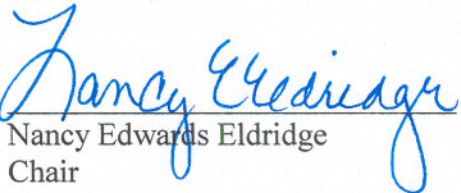
### CONCLUSION

A member of the Baldwin County Commission who, by virtue of his position on the Commission, serves as a member of the South Alabama Regional Planning Commission (SARPC), may, as a member of SARPC, including membership on SARPC's executive committee, vote on matters pertaining to SARPC programs and projects involving Baldwin County, as SARPC was formed to further the interests of its member entities, and the Commissioner's participation as a member of SARPC, as well as his membership on SARPC's executive committee, furthers the interest of the Baldwin County Commission.

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**AUTHORITY**

By 5-0 vote of the Alabama Ethics Commission on December 6, 2006.

  
Nancy Edwards Eldridge  
Chair  
Alabama Ethics Commission