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February 7, 2007

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ADVISORY OPINION NO. 2007-01

Mr. Larry L. Stewart
Bay Minette Career Center
Alabama's Career Center System
201 Faulkner Drive
Bay Minette, Alabama 36507-2711
and
Mayor Sonny Dobbins
City of Bay Minette, Alabama
301 D'Olive Street
Post Office Box 1208
Bay Minette, Alabama 36507

Use Of Office For Personal Gain/Mayor of
The City Of Bay Minette Renting Real
Property To The Bay Minette Career Center
Of Alabama's Career Center System, When
City Funds Are Involved

The Mayor of the City of Bay Minette may
rent real property to the Bay Minette Career
Center, when City funds are involved;
provided, that the transaction is an arms-
length transaction; that there is no other
satisfactory space available; that the Mayor
did not use his position to influence the
decision to rent his property; and, where the
Career Center instituted the transaction.

A copy of the contract/rental agreement
entered into between the Mayor of the City
of Bay Minette and the Bay Minette Career
Center, must be filed with the Ethics
Commission within ten days after its having
been entered into.

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Dear Mr. Stewart and Mayor Dobbins:

The Alabama Ethics Commission is in receipt of your requests for an Advisory Opinion of this Commission, and this opinion is issued pursuant to those requests.

QUESTION PRESENTED

May the Mayor of the City of Bay Minette, Alabama, rent real property to the Bay Minette Career Center when City funds are involved?

FACTS AND ANALYSIS

The facts as have been provided are as follows:

Alabama's Career Center System is hoping to maintain an office in Bay Minette, Alabama. They are currently searching for a building/space to move the Career Center into, and have been doing so since February of 2006.

Since that time, they have worked with the City of Bay Minette, the Baldwin County Commission, Faulkner Community College, the Chamber of Commerce, community leaders, the Industrial Development Board and local businesses to find a space within the Bay Minette city limits. They have looked at many buildings during that time span, and all have been ruled out due to reasons such as too much space, parking, bad roofs, etc.

Mr. Stewart states that no one has tried to pressure them into one location but, in fact, everyone has worked hard to keep the Career Center in Bay Minette, and that it has been a community effort.

Mayor Dobbins states that the council voted to budget \$12,000.00 to help keep the Career Center in Bay Minette for the next two years. He states that these funds were approved prior to the Career Center approaching him about renting space from him.

Mayor Dobbins states that he has followed many avenues in trying to obtain space for the Career Center. He has worked with County Commissioner Frank Burt, local real estate companies, the Bay Minette City Council and the local Industrial Development Board.

The Mayor states that he has used no pressure in obtaining the Career Center as a renter but, in fact, has tried to obtain a space for them in several other locations, but has been unable to

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do so due to restrictions placed on him by the Career Center. He states that some of these restrictions were—parking, square footage, rental price, building within the city limits, etc.

Mayor Dobbins feels that he has acted above board in all of his dealings with the Career Center, and only acted for the good of the Bay Minette community.

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.”

Section 36-25-11 states:

“Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into.”

The Ethics Law does not prohibit public officials and/or public employees from having outside business interests/opportunities. The law does prohibit, however, the use of one's public office for personal benefit.

In the facts provided, it would not violate the Ethics Law for the Mayor of the City of Bay Minette to rent real property to the Career Center when city funds are involved, provided:

- 1) that the transaction is an arms-length transaction;
- 2) that there is no other satisfactory space available;
- 3) that the Mayor did not use his office or the influence of his office to obtain the opportunity;
- 4) that the Career Center instituted the dealings with the Mayor; and,
- 5) that a copy of the contract/rental agreement entered into between the Mayor of the City of Bay Minette and the Bay Minette Career Center, is filed with the Ethics Commission within ten days after its having been entered into.

Based on the facts as provided and the above law, the Mayor of the City of Bay Minette may rent real property to the Bay Minette Career Center, when City funds are involved; provided, that the transaction is an arms-length transaction; that there is no other satisfactory space available; that the Mayor did not use his position to influence the decision to rent his property; and, where the Career Center instituted the transaction.

Further, a copy of the contract/rental agreement entered into between the Mayor of the City of Bay Minette and the Bay Minette Career Center, must be filed with the Ethics Commission within ten days after its having been entered into.

CONCLUSION

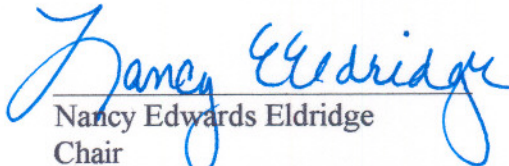
The Mayor of the City of Bay Minette may rent real property to the Bay Minette Career Center, when City funds are involved; provided, that the transaction is an arms-length transaction; that there is no other satisfactory space available; that the Mayor did not use his position to influence the decision to rent his property; and, where the Career Center instituted the transaction.

A copy of the contract/rental agreement entered into between the Mayor of the City of Bay Minette and the Bay Minette Career Center, must be filed with the Ethics Commission within ten days after its having been entered into.

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AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on February 7, 2007.


Nancy Edwards Eldridge
Chair
Alabama Ethics Commission