



STATE OF ALABAMA ETHICS COMMISSION



COMMISSIONERS

Nancy Edwards Eldridge, Chair
John H. Cooper, Esq., Vice-Chair
Cameron McDonald Vowell, Ph.D.
Michael K.K. Choy, Esq.
Linda L. Green

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

February 7, 2007

ADVISORY OPINION NO. 2007-03

Mr. Lane Weatherbee
Chairman
City of Piedmont Commercial Development Authority
P.O. Box 112
Piedmont, Alabama 36272

Conflict Of Interest/Mayor And City Council Of The City Of Piedmont, Alabama, Appointing Attorney To The Commercial Development Authority, When That Attorney Does Title Work For The Bank With Which The Commercial Development Authority Conducts Its Business

The Mayor and City Council of the City of Piedmont, Alabama, may appoint an attorney to the Commercial Development Authority of the City of Piedmont, when that attorney does title work for the bank with which the Commercial Development Authority conducts its business; however, should the board vote to undertake a project involving the purchase of property to be financed by that bank, the attorney may not do the title work on that loan.

Dear Mr. Weatherbee:

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 the Mayor and City Council of the City of Piedmont, Alabama, appoint an attorney to serve on the Commercial Development Authority, when the attorney does title work for the bank with which the Commercial Development Authority conducts its business?

FACTS AND ANALYSIS

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

Lane Weatherbee is the Chairman of the Commercial Development Authority of the City of Piedmont, Alabama. The board consists of five members, including the Chairman, and their terms are five years with a term of one member expiring each year. There currently exists a vacancy on the board, and it is the desire of the Mayor and City Council to place a local attorney on the board. Mr. Weatherbee has requested an attorney be appointed, as a person with legal knowledge would be a great benefit to their development projects.

The attorney being considered is named Alan Hunt. Mr. Hunt fears there may be a conflict of interest if he accepts the appointment to the Commercial Development Authority. Mr. Hunt does some, but not all the title work for the bank with which the board conducts its business. If the board votes to undertake a project involving the purchase of property, Mr. Hunt may be called upon to do the title work on the loan. He fears this may create a conflict.

Mr. Weatherbee states that, as a board member, Mr. Hunt would vote to accept or reject the project before any loan was requested. Mr. Hunt would not be called upon to provide opinions or perform other legal work for the Commercial Development Authority.

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 36-25-9(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.”

While Mr. Hunt is not precluded from doing title work for the bank with which the Commercial Development Authority conducts its business, it is an inherent conflict of interest for Mr. Hunt to vote on a purchase to be made by the Commercial Development Authority, and then to perform the title work on that project.

Even though Mr. Hunt may not know, before the vote is taken, that he would be requested to do the title work on behalf of the bank, the fact that the possibility exists would create a conflict of interest that could only be resolved by Mr. Hunt not undertaking to conduct any title work on projects involving the Commercial Development Authority.

Based on the facts as provided and the above law, the Mayor and City Council of the City of Piedmont, Alabama, may appoint an attorney to the Commercial Development Authority of

the City of Piedmont, when that attorney does title work for the bank with which the Commercial Development Authority conducts its business; however, should the board vote to undertake a project involving the purchase of property to be financed by that bank, the attorney may not do the title work on that loan.

CONCLUSION

The Mayor and City Council of the City of Piedmont, Alabama, may appoint an attorney to the Commercial Development Authority of the City of Piedmont, when that attorney does title work for the bank with which the Commercial Development Authority conducts its business; however, should the board vote to undertake a project involving the purchase of property to be financed by that bank, the attorney may not do the title work on that loan.

AUTHORITY

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



Nancy Edwards Eldridge
Chair
Alabama Ethics Commission