



STATE OF ALABAMA ETHICS COMMISSION



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February 7, 2007

ADVISORY OPINION NO. 2007-07

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Conflict Of Interest/Member Of Choctaw
County Commission Voting On Matters
Affecting The Choctaw County Sheriff's
Department, When His Brother Serves As
Sheriff Of Choctaw County

A member of the Choctaw County
Commission may vote and otherwise
participate in matters affecting the Choctaw
County Sheriff's Department, when his
brother serves as Sheriff of Choctaw
County; provided, that his brother is not
affected any differently than other members
of the class to which he belongs—that class
consisting of all employees of the Choctaw
County Sheriff's Department.

A member of the Choctaw County
Commission may not vote, attempt to
influence or otherwise participate in a matter
that affects his brother, the Sheriff of
Choctaw County, in a manner differently
than it affects all other employees of the
Choctaw County Sheriff's Department.

Dear Mr. McPhearson:

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. Is a member of the Choctaw County Commission prohibited from voting on all matters that may affect the Choctaw County Sheriff's Department, when his brother is the Sheriff of Choctaw County? If the answer is "no," please explain in general terms what matters he can vote on that relate to the Sheriff's Department. More specifically:
 - 1(a). Is it proper for the Choctaw County Commissioner to vote on Choctaw County's General Fund Budget, which would historically include the Sheriff's Department's budget? For the purpose of this question—please assume that the Sheriff's Department's budget would include the salary for the Sheriff.
 - 1(b). Is it proper for the Choctaw County Commissioner to vote on the hiring or firing of deputies and/or administrative personnel who may work for the Sheriff's Department?
 - 1(c). Is it proper for the Choctaw County Commissioner to vote on pay raises for deputies and administrative personnel who work with the Sheriff's Department?

FACTS AND ANALYSIS

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

In November of 2006, Henry Lovette became a County Commissioner for District Four in Choctaw County, Alabama. His brother, James Lovette, will take office as the Sheriff of Choctaw County on January 15, 2007. Because there are certain instances when the County Commission will take action on matters regarding the Sheriff's Department, the above questions have been asked.

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 26-25-1(12) defines a family member of the public official as:

“(12) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official.”

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.”

All the questions presented in this opinion can be answered together.

Based on the definition of a family member of a public official, James Lovette, the Sheriff of Choctaw County, is a family member of County Commissioner Henry Lovette. Therefore, Henry Lovette may not use his position in a manner that would provide a personal benefit to his brother.

While Section 9(c) contains a general prohibition on a public official voting or participating in a matter that provides a financial benefit to a family member, Section 5(a) and the definition of a conflict of interest, more specifically determine when a public official may vote on a matter that affects a family member.

By way of background, on September 5, 1985, the Supreme Court of Alabama rendered Opinion of the Justices No. 317. That opinion stated that:

“Legislators employed and paid by the public education system or those whose spouses were so employed and paid could constitutionally vote on the bill granting a pay raise for public education system employees, so long as the bill did not affect any such legislator in a way different from the way it affected the other members of the class to which he belonged.”

Likewise, the Ethics Law’s definition of a conflict of interest specifically says that a conflict exists when any action or inaction “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 . . .”

While this is a question that will largely have to be looked at on an issue-by-issue basis, the critical determination is whether or not the Sheriff is being singled-out for special treatment on any particular issue or vote.

Commissioner Lovette may not vote, attempt to influence or otherwise participate in any way in a matter that affects his brother, as Sheriff of Choctaw County, differently than it affects all other members of the class to which he belongs. In this case, that class would consist of all employees of the Choctaw County Sheriff’s Department.

Therefore, it would not be prohibited for the County Commissioner to vote on the hiring of deputies, administrative personnel, budget allocations in general to the Sheriff's Department, etc., as these would be benefits to the Sheriff's Department and the operation of the Sheriff's Department, and would not specifically alter the conditions of the Sheriff's service. If, on the other hand, the question before the Commission is the granting of a pay raise to the Sheriff, and the Sheriff alone, then Commissioner Lovette may not vote, attempt to influence or otherwise participate in the matter, as his brother would be singled-out for special treatment, and affected uniquely.

As relates to general budget allocations, provided the General Fund Budget does not affect the Sheriff differently than it affects all employees of the Sheriff's Department, Commissioner Lovette may vote on that matter.

Based on the facts as provided and the above law, a member of the Choctaw County Commission may vote and otherwise participate in matters affecting the Choctaw County Sheriff's Department, when his brother serves as Sheriff of Choctaw County; provided, that his brother is not affected any differently than other members of the class to which he belongs—that class consisting of all employees of the Choctaw County Sheriff's Department.

Further, a member of the Choctaw County Commission may not vote, attempt to influence or otherwise participate in a matter that affects his brother, the Sheriff of Choctaw County, in a manner differently than it affects all other employees of the Choctaw County Sheriff's Department.

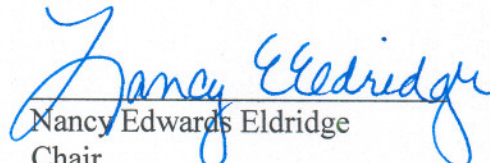
CONCLUSION

A member of the Choctaw County Commission may vote and otherwise participate in matters affecting the Choctaw County Sheriff's Department, when his brother serves as Sheriff of Choctaw County; provided, that his brother is not affected any differently than other members of the class to which he belongs—that class consisting of all employees of the Choctaw County Sheriff's Department.

A member of the Choctaw County Commission may not vote, attempt to influence or otherwise participate in a matter that affects his brother, the Sheriff of Choctaw County, in a manner differently than it affects all other employees of the Choctaw County Sheriff's Department.

AUTHORITY

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


Nancy Edwards Eldridge
Chair
Alabama Ethics Commission