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February 7, 2007

ADVISORY OPINION NO. 2007-09

Mr. Sid Holcomb
President
DeKalb County Commission
Suite 200
111 Grand Avenue, S.W.
Fort Payne, Alabama 35967

Conflict Of Interest/Wife Of DeKalb County
Commissioner Being Offered Employment
With County Commission

The wife of a member of the DeKalb County Commission may be offered and may accept the position of Revenue Enforcement Agent with the DeKalb County Commission; provided, that her husband, a Commission member, not vote, attempt to influence or in any manner participate in any aspect of the hiring process.

In addition, the member of the County Commission may not take any action as a member of the County Commission that would affect his wife's employment any differently than it would affect that of all other County employees.

The Alabama Ethics Commission has no jurisdiction over Section 11-3-5, Code of Alabama, 1975, and it is suggested that the requestor of this opinion contact the Attorney General's Office for the applicability of that section.

Dear Mr. Holcomb:

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 DeKalb County Commission vote to employ the wife of a member of the County Commission in a position working for the County Commission and reporting to the Commission President without violating the Alabama Ethics Act or the provisions of Section 11-3-5, Code of Alabama, 1975, assuming that Commissioner husband has and will continue to recuse himself from all discussions and/or decisions related to this matter?

FACTS AND ANALYSIS

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

A number of years ago, the DeKalb County Commission established a position within the County government to assist with the enforcement of County business licenses, gasoline and motor fuel taxes and various other revenue measures administered by the County Commission. The position was initially referred to as the County License Inspector, but has evolved into the position of Revenue Enforcement Agent. A few years ago, a deputy sheriff was assigned to this position to give more clout to the position. The consensus was that a sworn peace officer might present a stronger presence than a non-peace officer. The lady who was assigned to this position was assigned to the County Commission working directly under the supervision of the Commission President, and was paid from funds budgeted to the County Commission as opposed to the Sheriff's budget; however, she continued to wear the uniform of a deputy sheriff.

On January 23, 2007, a new Sheriff was sworn into office, and the new Sheriff has made a number of personnel changes. The lady who was serving as the Revenue Enforcement Agent was named by the new Sheriff to be a deputy replacing another female deputy who was not retained by the new Sheriff.

Accordingly, the Commission has a vacancy to fill. A third female officer currently employed as an investigator by the Sheriff's office has expressed an interest in the Revenue Agent position.

This lady has been employed by the Sheriff's office for approximately 23 years. She began her service as a clerk, obtained her APOST certification and worked as a deputy for several years before she became the only female investigator assigned to the investigators' section. Prior to her service with the Sheriff's office, she served as a town clerk and municipal court clerk for a small town in DeKalb County. Based on her experience and knowledge of the County, she would be an ideal person to serve as the Revenue Agent.

The potential ethical problem arises, in that this potential employee's husband is a member of the County Commission. He was first elected to the Commission in 2002 and re-elected to another four-year term in the fall of 2006. His wife was a long-time employee of the Sheriff's office prior to him ever seeking public office.

No one had any idea that the previous Revenue Enforcement Agent was even considering a return to the Sheriff's office until several weeks ago, and her decision has left the Commission in a predicament regarding the filling of this job. The husband of the candidate has recused himself from any involvement or discussion of this matter since he wants to avoid any ethical problem or even the appearance thereof.

The Commission, therefore, requests this Advisory Opinion.

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(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.”

While the Ethics Law does not prohibit a family member of a public official from being employed by that public entity, it does prohibit the public official from using his or her position or the influence of his or her office to assist the family member in obtaining that employment. Likewise, the public official may take no action in his or her official capacity that would affect the terms and conditions of the family member's employment with that public entity differently than it would affect all other employees.

Based on this, the member of the County Commission may not vote, attempt to influence or in any manner participate in the hiring of his wife. He may not have discussions with the other members of the County Commission, nor may he attempt to exert his influence in seeing that his wife is hired. Likewise, should she be hired, he may not participate or be involved in any matter that would single-out or affect his wife differently than it would affect all other employees of the County Commission.

Based on the facts as provided and the above law, the wife of a member of the DeKalb County Commission may be offered and may accept the position of Revenue Enforcement Agent with the DeKalb County Commission; provided:

- 1) that her husband, a Commission member, not vote, attempt to influence or in any manner participate in any aspect of the hiring process; and,
- 2) that her husband, a Commission member, not take any action as a member of the County Commission that would affect his wife's employment any differently than it would affect that of all other County employees.

Further, the Alabama Ethics Commission has no jurisdiction over Section 11-3-5, Code of Alabama, 1975, and it is suggested that the requestor of this opinion contact the Attorney General's Office for the applicability of that section.

CONCLUSION

The wife of a member of the DeKalb County Commission may be offered and may accept the position of Revenue Enforcement Agent with the DeKalb County Commission; provided, that her husband, a Commission member, not vote, attempt to influence or in any manner participate in any aspect of the hiring process.

In addition, the member of the County Commission may not take any action as a member of the County Commission that would affect his wife's employment any differently than it would affect that of all other County employees.

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The Alabama Ethics Commission has no jurisdiction over Section 11-3-5, Code of Alabama, 1975, and it is suggested that the requestor of this opinion contact the Attorney General's Office for the applicability of that section.

AUTHORITY

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


Nancy Edwards Eldridge
Chair
Alabama Ethics Commission