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ADVISORY OPINION NO. 2007-21

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Conflict Of Interest/Newly-Elected County
Commissioner Providing Accounting
Services For Board Whose Members Are
Appointed By The County Commission

A newly-elected member of the Baldwin County Commission may continue to provide accounting services to the Baldwin County E-911 Board whose members are appointed by the Baldwin County Commission; provided, that the County Commissioner does not vote, attempt to influence or otherwise participate in any dealings between the County Commission and the E-911 Board, including, but not limited to appointments by the County Commission to the E-911 Board.

Should new or an increased amount of services including, but not limited to compensation be desired from the County Commissioner by the E-911 District, they must be obtained through some type of bid process. Further, a copy of the contract must be filed with the Ethics Commission within ten days after its having been entered into.

Dear Mr. Ryan:

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 newly-elected member of the Baldwin County Commission, who, in the past, has provided accounting services to the Baldwin County E-911 District, whose board members are appointed by the County Commission, continue to provide those services to the E-911 Board?

FACTS AND ANALYSIS

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

Mark D. Ryan represents the Baldwin County Emergency Communication District (E-911), and on their behalf, requests this opinion.

For many years, the Board has utilized Wayne Gruenloh as a professional CPA for accounting services. Mr. Gruenloh's firm, Gruenloh & Associates, provides general accounting services to the Board on a monthly basis and also provides an annual audit for the Board.

Mr. Gruenloh has been elected to serve on the Baldwin County Commission and currently holds the position of Chairman of the Commission. Pursuant to *Code of Alabama* §11-98-4(a), the Commission retains the continuing authority to appoint members of the E-911 Board. The Commission also retains the authority to approve the acquisition, disposition or improvements to real property owned by E-911 pursuant to §11-98-4(h).

The E-911 Board is concerned that the continued employment of Mr. Gruenloh as a private individual providing accounting services may create a conflict now that Mr. Gruenloh serves on the Baldwin County Commission with the authority to exercise certain powers relative to the E-911 Board, as detailed above.

The Baldwin County E-911 Board requests the Alabama Ethics Commission to issue a formal opinion as to whether the Board can continue the services of Mr. Gruenloh concurrent with his service as a Baldwin County Commissioner.

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(2) defines a business with which the person is associated as:

“(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.”

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 main tenet of the Alabama Ethics Law is that no public official or public employee may use his official position in a manner that would provide a personal benefit to himself/herself, a member of his or her family, or a business with which he or she is associated.

An important consideration in this scenario is the fact that Mr. Gruenloh has been providing accounting services to the E-911 Board since before being elected to the County Commission.

Should the E-911 Board desire to change the nature or amount of services they are receiving from Mr. Gruenloh, they must be put out for some type of bid before being awarded to Mr. Gruenloh.

The Commission has addressed this particular aspect of this scenario on several occasions, most recently on October 4, 2006, when Advisory Opinion No. 2006-18 was rendered.

That opinion held that:

“A newly-elected member of the Cherokee County Board of Education may continue to serve as a night school tutor for the school system subsequent to her taking her seat on the board; provided, the conditions of her employment as a night school tutor do not change upon her taking her seat; and, that she not vote, attempt to influence, or in any way participate in any board actions affecting the night school program or the distribution of the grant used to fund the night school program that affect her differently than all other night school tutors.”

Likewise, Advisory Opinion No. 99-15(B), rendered on May 5, 1999, held that:

“A bank, whose senior vice president has been appointed to the city council and serves as chairman of the city’s finance committee, may continue to do business with the city board of education in the same manner as before such appointment and bid for future business with the city’s board of education, as the only nexus between the city council and the board of education is that the city council appoints its membership.”

If the facts were not as they are—if Mr. Gruenloh desired to do business with the E-911 Board, those services would have to be obtained through some type of bid process. As the scenario concerns an ongoing relationship, i.e., the status quo, the only prohibitions that will apply to Mr. Gruenloh are that he may not vote, attempt to influence or in any manner participate in any dealings between the County Commission and the E-911 Board. Primarily, he may not involve himself in the appointment of members to the E-911 Board, as he would be appointing the individuals with whom he would be contracting to provide his accounting services, thereby creating a conflict of interest.

Based on the facts as provided, a newly-elected member of the Baldwin County Commission may continue to provide accounting services to the Baldwin County E-911 Board whose members are appointed by the Baldwin County Commission; provided, that the County Commissioner does not vote, attempt to influence or otherwise participate in any dealings between the County Commission and the E-911 Board, including, but not limited to appointments by the County Commission to the E-911 Board.

Should new or an increased amount of services including, but not limited to compensation be desired from the County Commissioner by the E-911 District, they must be obtained through some type of bid process. Further, a copy of the contract must be filed with the Ethics Commission within ten days after its having been entered into.

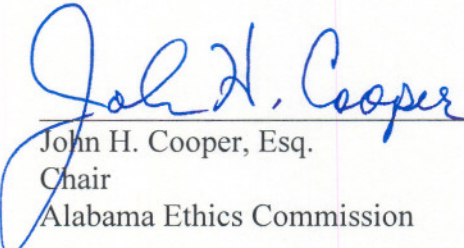
CONCLUSION

A newly-elected member of the Baldwin County Commission may continue to provide accounting services to the Baldwin County E-911 Board whose members are appointed by the Baldwin County Commission; provided, that the County Commissioner does not vote, attempt to influence or otherwise participate in any dealings between the County Commission and the E-911 Board, including, but not limited to appointments by the County Commission to the E-911 Board.

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AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on December 5, 2007.



John H. Cooper, Esq.
Chair
Alabama Ethics Commission