



# STATE OF ALABAMA ETHICS COMMISSION



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October 1, 2008

## ADVISORY OPINION NO. 2008-27

Mr. Booker T. Forte, Jr.  
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Conflict Of Interest/Daughters Of Mayor  
Applying For And Receiving Community  
Development Block Grant (CDBG) From  
The Alabama Department Of Economic And  
Community Affairs (ADECA) Administered  
By The Town

The daughters of the Mayor of the Town of Geiger, Alabama, may not receive CDBG grants from ADECA administered through the Town of Geiger, when the Mayor voted for the Town to make an application to ADECA for the grant, and also voted for the selection of the grant administrator, unless all eligible applicants receive the benefits of the grant prior to the Mayor's daughters receiving the grant, and where the Mayor plays no further role in the administration of the grants.

Dear Mr. Forte:

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 daughters of the Mayor of the Town of Geiger, Alabama receive a CDBG grant from ADECA administered by the Town of Geiger, when the Mayor has voted to make application for the grant, and has voted to select the grant administrator?

### **FACTS AND ANALYSIS**

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

Booker T. Forte, Jr. represents the Town of Geiger, Alabama. The Town of Geiger has recently received a Community Development Block Grant (CDBG) from the Alabama Department of Economic and Community Affairs (ADECA). The ADECA grant is utilized to rehabilitate substandard homes of low income citizens of Geiger. These households are required to submit grant applications that provide evidence that they are qualified to receive grants with respect to household income, residency and home ownership. The Mayor and Town Council have full and final decision making authority/responsibility in this program and this responsibility includes approval/disapproval of all household applications and specifications of the work to be performed on each home.

The Town received two applications that may raise questions of ethics. The applications were made by the Mayor's daughters for rehabilitation of their manufactured homes pursuant to the grant.

The Mayor's daughters have submitted applications for the rehabilitation of their manufactured homes in which they live. Their applications are acceptable with respect to all program policies and procedures including low income status, residency and home ownership. The daughters' homes are located on real property owned by the Mayor. The Mayor has executed and/or agreed to execute lifetime leases (as required by ADECA) to his daughters for the land on which the homes are located. The Mayor does not reside in either of the homes in issue.

The Mayor voted for the Town of Geiger to make an application to ADECA for the rehabilitation grant that was made to the Town. He also voted for the selection of the grant administrator, Jim Crouse. He has not voted to approve work to rehabilitate his daughters' homes.

The Town requests the Commission's opinion on whether the Mayor's daughters may benefit from the program. If answered in the affirmative, is there a particular protocol which should be followed in serving these persons?

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 36-25-9(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.”

The major dictate of the Alabama Ethics Law is that no public office shall be used for the personal benefit of the public official/public employee, a member of his or her family or a business with which he or she is associated.

The Commission has addressed similar situations in the past. On August 23, 1996, the Commission rendered Advisory Opinion No. 96-80, which stated that:

“Non-dependent family members of a City Council person as defined by Section 36-25-1(12), may receive funds from a CDBG grant to make repairs to the non-dependent family member’s dwelling; provided, there are adequate funds available at the time the application process is completed to make repairs to the dwellings of all persons who have applied for such funds.”

“Non-dependent family members as defined by Section 36-25-1(12) may not receive funds from a CDBG grant to make repairs to the non-dependent family member’s dwelling should a rating system be necessary by the City Council to determine which applicants are eligible for the CDBG funds.”

On August 13, 1997, the Commission rendered Advisory Opinion No. 97-73, which held that:

“The spouse of a City Councilperson may receive funds from a CDBG grant to make repairs to the home of the spouse and Council member, when the CDBG grant was applied for and approved by ADECA prior to the Council member taking office, as the Council member did not take part in the application process for the project; provided, there is enough grant money to provide for all applicants.”

What is troubling in the facts before the Commission is that the Mayor has participated in two out of three steps in the process. First of all, he voted to apply for the grant through ADECA, and secondly, voted to approve the grant administrator.

Clearly, if the Mayor is involved in awarding CDBG grants to his daughters, he is in violation of the Ethics Law.

At the same time, the daughters should not be precluded from receiving the CDBG grant money just because their father is the Mayor of the Town of Geiger.

In the above scenario, for the daughters to legally be able to receive the benefit of the CDBG money, the following things must take place:

1. All eligible applicants must receive the CDBG grant money prior to the Mayor's daughters receiving the same.
2. The Mayor may have no further involvement in the process, including but not limited to selecting qualified applicants, awarding the grant money or discussing the grant money with the City Council and/or other Town officials.

Short of the above taking place, the daughters may not receive the grant money.

Based on the facts as provided and the above law, the daughters of the Mayor of the Town of Geiger, Alabama, may not receive CDBG grants from ADECA administered through the Town of Geiger, when the Mayor voted for the Town to make an application to ADECA for the grant, and also voted for the selection of the grant administrator, unless all eligible applicants receive the benefits of the grant prior to the Mayor's daughters receiving the grant, and where the Mayor plays no further role in the administration of the grants.

### **CONCLUSION**

The daughters of the Mayor of the Town of Geiger, Alabama, may not receive CDBG grants from ADECA administered through the Town of Geiger, when the Mayor voted for the Town to make an application to ADECA for the grant, and also voted for the selection of the grant administrator, unless all eligible applicants receive the benefits of the grant prior to the Mayor's daughters receiving the grant, and where the Mayor plays no further role in the administration of the grants.

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**AUTHORITY**

By 4-0 vote of the Alabama Ethics Commission on October 1, 2008.



Cameron McDonald Vowell, Ph.D.

Chair

Alabama Ethics Commission