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ADVISORY OPINION NO. 2011-03(B)

Mr. Barry Morris
Member
Florence City Council
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Conflict Of Interest/Member Of Florence
City Council Voting On Sale Of Property
From City To The University Of North
Alabama When The Council Member Is
Employed By The University

A member of the Florence City Council,
who is also an employee of the University of
North Alabama, may not vote, attempt to
influence or otherwise participate in the sale
of property from the City to the University,
as a general conflict of interest exists, and he
cannot best serve the City's interests and
the employer's interests at the same time.

Dear Mr. Morris:

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 part-time professor at the University of North Alabama, who is also an elected member of the Florence City Council, vote on the sale of property from the City of Florence to the University of North Alabama?

FACTS AND ANALYSIS

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

Barry Morris is employed as a part-time employee by the University of North Alabama (UNA), as the Director of Planned Giving. He is also an elected member of the City Council of the City of Florence, Alabama. UNA has offered to purchase from the City of Florence, 60.5 acres of real property. If the proposed sale moves forward, the City Council will have to vote on an ordinance approving the sale and authorizing the Mayor to convey the property to UNA by deed. UNA has offered to purchase the property for \$1,200,000.00, and the appraised value of the property is \$1,394,000.00. Neither Mr. Morris nor any members of his family will receive any personal benefit whatsoever from the sale of the property.

UNA is a public, Alabama state university, governed by a board of trustees appointed by the Governor. If UNA were a business, it would certainly be a business with which he, as an employee, is associated as defined in Section 36-25-1(2).

Mr. Morris does not think that UNA is a business as defined in Section 36-25-1(1) of the Code of Alabama, 1975, as amended.

Mr. Morris, through his attorney, cites the case of *Lambert v. Wilcox County Commission*, 623 So.2d. 727 (Ala. 1993).

In that case, the Alabama Supreme Court held that the Wilcox County Board of Education was not a "business" as defined in the previously mentioned section, reasoning that the Legislature did not intend to include county governmental agencies in the definition of "business." Mr. Morris makes the argument that because UNA is a public, Alabama state institution, UNA would also not be a "business" as defined by that section.

In the case of *Lambert v. Wilcox County Commission*, taxpayers brought an action for declaratory judgment and injunctive relief challenging the County Commission's decision to increase the sales tax. In that case, Mr. Lambert was a bus driver employed by the County Board of Education who also served on the County Commission. The Court held that Mr. Lambert was not ineligible to vote on the ordinance conferring financial benefit on his employer, the County

Board of Education, since the Board of Education did not meet the definition of a “business” as defined by the Ethics Law.

Prior to 1995, Section 36-25-5(a) stated that:

“No public official or employee shall use an official position or office to obtain direct, personal financial gain for himself or his family, or any business with which he or his family is associated, unless such use and gain are specifically authorized by law.”

In 1995, Section 5(a) was changed to read as follows:

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."

It should be pointed out that prior to 1995, Section 5(a) required “direct, personal financial gain.” Subsequent to 1995, the law only required “personal gain.”

Likewise, prior to 1995, a business was defined in Section 36-25-1(1) as:

“(1) Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity.”

Again, subsequent to 1995, the definition of a business was changed to read:

Section 36-25-1(1):

“(1) Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity.”

Even though UNA does not fit the definition of a business as defined in *Lambert v. Wilcox County Commission*, as Mr. Morris is both an elected member of the Florence City Council and a part-time employee of the University of North Alabama, it would be virtually

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impossible for him to serve the best interests of both the City and the University at the same time. He would, in effect, be “serving two masters.”

It should be pointed out that there has been much controversy about this issue in the Florence area, and it appears that Mr. Morris’ vote is necessary for the matter to pass. The fact that it has been so controversial further indicates the difficulty Mr. Morris may have in adequately performing his responsibilities as a member of the City Council, as opposed to his duties as an employee of the University.

Based on the inherent conflict of interest, as well as the fact that this has been a very controversial issue in the Florence area, Mr. Morris may not vote, attempt to influence or otherwise participate in the sale of the property.

CONCLUSION

A member of the Florence City Council, who is also an employee of the University of North Alabama, may not vote, attempt to influence or otherwise participate in the sale of property from the City to the University, as a general conflict of interest exists, and he cannot best serve the City’s interests and the employer’s interests at the same time.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on April 6, 2011.



Braxton L. Kittrell, Jr., Esq.
Chair
Alabama Ethics Commission