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August 7, 2013

ADVISORY OPINION NO. 2013-07

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Conflict Of Interest/City Council Member
Voting To Directly Affect Financial
Interests Of Individual Who Contributed To
His Campaign

A City Council member may vote on a matter that directly affects the financial interests of an individual who contributed to his campaign, as the action will adversely affect the individual, and when the campaign contribution was made in the ordinary election cycle.

Conflict Of Interest/Council Member Voting
To Directly Affect Financial Interests Of A
Former Employee, Business Associate
And/Or Commercial Tenant Of The Council
Member

A City Council member may vote on a matter that would adversely affect the financial interests of an individual when that

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individual is a former employee, business associate and/or commercial tenant of the Council member, but those business relationships no longer exist.

Conflict Of Interest/A Council Member, Who Served On The Planning Commission, When The Subject Of An Issue To Be Voted On By The Council Was Before The Planning Commission, And When That Issue May Result In Litigation, Voting in the Matter

A City Council member, who served on the Planning Commission when an issue to be voted on by the Council was before the Planning Commission, may not vote, attempt to influence or otherwise participate in the matter as a Council member, as he may either be a witness or a party to any litigation arising out of the vote, and may not use his Council seat to affect his standing in that litigation.

Dear Mr. Downey:

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) Does a Council member have a conflict of interest that would prevent him or her from voting as to a matter that would directly affect the financial interests of a non-familial individual, when that individual to be impacted by the vote contributed to the Councilman's campaign, and when the citizen was a former business associate and commercial tenant of the Council member?
- 2) Does a Council member have a conflict of interests that would prevent him or her from voting as to a matter that would directly affect the financial interest of a non-familial individual, when the individual to be impacted by the vote, is a former employee of the Council member's business and a long-time friend and associate of the Council member's family, and when that Council member was serving on the Planning Commission when the issue was before the Commission, and when the matter will more than likely result in litigation?

FACTS AND ANALYSIS

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

Bruce J. Downey, IV, is the City Attorney for the City of Anniston. The City Council, in the near future, may be required to vote to authorize action by the City that will adversely and singularly affect an individual citizen. The potential action that will be contemplated by the Council involves a matter of a potential civil liability for the City regarding a zoning issue. Two members of the Council are concerned that they may have a conflict of interest that would prevent them from voting on the particular issue. They have asked to request a formal opinion from the Commission based on this set of circumstances.

The Alabama Ethics Law, Code of Alabama 1975, Section 36-25-1(26) defines a public official as:

"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:

“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(14) defines a family member of the public official as:

“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 36-25-5(a) states:

“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 36-25-1(8) defines a conflict of interest as:

“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 36-25-9(c) states:

“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 Ethics Law is designed to prevent the use of public office for personal gain for the public official/public employee, a member of their family or a business with which they are associated.

As a general rule, a personal benefit is not bestowed when the action taken adversely impacts on the individual involved, whether it is a family member or a business with which they are associated.

In both scenarios, the business relationships that may have existed in the past between the Council members, individually, and the citizen to be impacted are no longer in effect.

To differentiate between the two scenarios, the Council member in question number one received a campaign contribution from the individual during an election contest in 2012. The contribution was made in the ordinary election cycle.

Therefore, as to question number one, a Council member does not have a conflict of interest that would prevent him or her from voting on a matter that would directly affect the financial interests of a non-familial individual in an adverse manner, when the citizen to be impacted by the vote contributed to the Council member's campaign, and when the citizen was a former business associate and commercial tenant of the Council member.

To differentiate scenario number two, the Council member involved in this question, served on the Planning Commission when the affected individual sought approval of design plans in advance of his purchasing the affected property. It is alleged that the Council member may have told the individual that his contemplated improvements could be approved administratively, as opposed to a Planning Commission vote. Apparently, the City Planner subsequently and erroneously approved the design plan.

As it appears that this matter will ultimately result in litigation, the Council member in question number two, should abstain from voting, attempting to influence or in any manner

participating in the issue, as he most likely will be either a witness or a party to the litigation and, therefore, cannot use his Council seat to affect his standing either as a witness or a party to that litigation.

Based on the facts as provided and the above law, a City Council member may vote on a matter that directly affects the financial interests of an individual who contributed to his campaign, as the action will adversely affect the individual, and when the campaign contribution was made in the ordinary election cycle.

A City Council member may vote on a matter that would adversely affect the financial interests of an individual when that individual is a former employee, business associate and/or commercial tenant of the Council member, but those business relationships no longer exist.

A City Council member, who served on the Planning Commission when the issue to be voted on by the Council was before the Planning Commission, may not vote, attempt to influence or otherwise participate in the matter as a Council member, as he may either be a witness or a party to any litigation arising out of the vote, and may not use his Council seat to affect his standing in that litigation.

CONCLUSION

A City Council member may vote on a matter that directly affects the financial interests of an individual who contributed to his campaign, as the action will adversely affect the individual, and when the campaign contribution was made in the ordinary election cycle.

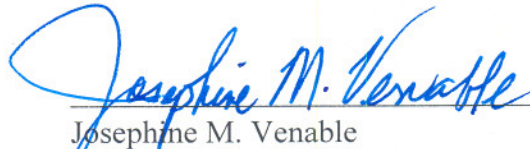
A City Council member may vote on a matter that would adversely affect the financial interests of an individual when that individual is a former employee, business associate and/or commercial tenant of the Council member, but those business relationships no longer exist.

A City Council member who, served on the Planning Commission when an issue to be voted on by the Council was before the Planning Commission, may not vote, attempt to influence or otherwise participate in the matter as a Council member, as he may either be a witness or a party to any litigation arising out of the vote, and may not use his Council seat to affect his standing in that litigation.

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AUTHORITY

By 4-0-1 vote of the Alabama Ethics Commission on August 7, 2013.



Josephine M. Venable
Chair

Alabama Ethics Commission