



# STATE OF ALABAMA ETHICS COMMISSION



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October 2, 2013

## ADVISORY OPINION NO. 2013-09

Ms. Naomi H. Truman  
Executive Director  
Housing Authority of the Birmingham District  
1826 3<sup>rd</sup> Avenue South  
P.O. Box 55906  
Birmingham, Alabama 35255-5906

Conflict Of Interest/Development  
Administrator Of Housing Authority Of The  
Birmingham District (HABD), Who Serves  
As A Birmingham City Council Member  
Participating In HABD Issues Coming  
Before The Birmingham City Council

An HABD employee/Birmingham City  
Councilor may not, as a City Council  
member, vote, attempt to influence or  
otherwise participate in financial issues  
between HABD and the City of Birmingham  
regardless of whether or not the property at  
issue is in the Council member's district.

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Dear Ms. Truman:

The Alabama Ethics Commission is in receipt of your request for a formal Advisory Opinion of the Commission, and this opinion is issued pursuant to that request.

### **QUESTIONS PRESENTED**

1. At what level of participation can the HABD employee/Birmingham City Councilor serve, if houses that HABD owns or pursues ownership of are in the Councilor's district?
2. Can the HABD employee/Birmingham City Councilor discuss and participate in discussion of issues at the Council meeting concerning matters or property of HABD, whether in or out of the Councilor's district?
3. Can the HABD employee/Birmingham City Councilor vote on issues at the Council meeting concerning matters or property of HABD, whether in or out of the Councilor's district?

### **FACTS AND ANALYSIS**

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

The Housing Authority of the Birmingham District (HABD) is a Municipal Housing Authority established pursuant to the provisions of Title 24, Chapter 1, Articles 20 through 45 of the Code of Alabama and a public housing agency under the United States Housing Act of 1937. The HABD has a five (5) member Board of Commissioners appointed by the Mayor of the City of Birmingham. The Commissioners pass resolutions and policies for the governance of the HABD. The Commissioners receive no pay for their service. HABD is committed to providing better housing for residents and to improve neighborhoods in the City of Birmingham.

In keeping with its mission of providing decent, safe and affordable housing, HABD is committed to building better neighborhoods and revitalizing the City as an environment flourishing in self-sufficiency and economic opportunity. HABD has implemented measures for increasing available housing in the City of Birmingham by developing affordable quality housing units with a preference for home ownership. This includes new construction of single-family homes and multi-family apartments throughout the City of Birmingham. Construction of additional new single-family homes is underway and additional construction is anticipated. The funding source for these developments is the U.S. Department of Housing and Urban Development (HUD), with portions of funding coming from other public sources, as well as the City of Birmingham with some private partnerships. Several formal and informal partnerships with public and private entities that target affordable housing have been established.

HABD employs a full-time Development Administrator who is also an elected member of the Birmingham City Council. At HABD, the Development Administrator assists HABD in carrying out the plan of increasing available housing in the City of Birmingham. There is no direct benefit to the HABD employee/Birmingham City Councilor from this work, only to the HABD. However, to avoid any conflicts of interest, or the appearance thereof, HABD requests a formal opinion on the above questions.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(27), 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(16) defines governmental corporations and authorities as:

“Public or private corporations and authorities, including but not limited to, hospitals or other health care corporations, established pursuant to state law by state, county or municipal governments for the purpose of carrying out a specific governmental function.”

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 36-25-5(c) states:

“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. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.”

The Ethics Law prohibits the use of one’s public office for their personal benefit, the benefit of a family member or the benefit of a business with which they are associated.

While under the Ethics Law, HABD is a business with which the employee/City Councilor is associated, it is a not-for-profit organization. It is a governmental corporation and/or

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authority established by law to carry-out a public function, i.e., revitalizing the City and increasing available low-income housing.

As there is no personal gain accruing to either the employee/City Councilor or HABD, there are no prohibitions in the employee/City Councilor participating in, including discussing and voting on issues before the City Council concerning matters or property of HABD, regardless of whether or not the property is in the Councilor's district.

Based on the facts as provided and the above law, an HABD employee/Birmingham City Councilor may not, as a City Council member, vote, attempt to influence or otherwise participate in financial issues between HABD and the City of Birmingham regardless of whether or not the property at issue is in the Council member's district.

#### CONCLUSION

An HABD employee/Birmingham City Councilor may not, as a City Council member, vote, attempt to influence or otherwise participate in financial issues between HABD and the City of Birmingham regardless of whether or not the property at issue is in the Council member's district.

#### AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on October 2, 2013



Anthony Humphries

Chair

Alabama Ethics Commission