October 1, 2014

ADVISORY OPINION NO. 2014-04

The Honorable Todd Strange
Mayor, City of Montgomery
Post Office Box 1111
Montgomery, Alabama 36101-1111

Conflict Of Interest/Member Of Legislature Consulting With Municipality Regarding The 50th Anniversary Of The Selma To Montgomery March

The City of Montgomery may enter into a contract with a Legislator to provide consulting services relating to youth activities planned for the 50th Anniversary of the Selma to Montgomery March, as the Legislator was approached by the City of Montgomery to provide the services, as well as the fact that the services contracted for fall within the Legislator’s area of expertise.

A member of the Legislature, who is approached by the City of Montgomery to provide consulting services, may do so; however, he may not use any State resources under his discretion or control as a member of the Legislature to assist him in either obtaining the opportunity or in performing the consulting contract.
In addition, should the contract still be in effect when the Legislature goes back into session, should an issue relating to the consulting agreement appear before the Legislature, Senator Ross may not vote, attempt to influence or in any manner participate in the issue if his consulting contract could potentially be affected by the legislative action.

Dear Mayor Strange:

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 City of Montgomery enter into a contract with a Legislator to provide consulting services relating to youth activities planned for the 50th Anniversary of the Selma to Montgomery March?

FACTS AND ANALYSIS

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

Mayor Strange states that it is important to understand the significance of the events of 50 years ago. On March 7, 1965, the eyes of a nation watched as thousands of ordinary people took to the streets of Selma to march for voting rights. The protestors were met at the foot of the Edmund Pettus Bridge by state troopers that attacked the group with nightsticks and tear gas, injuring dozens (Bloody Sunday). The violence stopped the marchers’ first attempt, but they would not be silenced or stopped for good.

Two weeks later, the marchers, including Dr. Martin Luther King, Jr. and the escort of the National Guard, set off again from Selma and marched along U.S. Hwy. 80 to Montgomery. Hundreds of protesters marched through Lowndes County on the trail from Selma to Montgomery in hopes of making great change. Along the way the marchers camped at three separate sites, including the historic “Tent City,” which stood at the halfway point. The next day, the marchers continued their journey to Montgomery. They covered the 54 miles between Selma and Montgomery in four days, wrapping up their journey with the Stars of Freedom rally at the City of St. Jude.
The march reached its positive resolution on March 25, 1965 at the steps of the Alabama State Capitol. The crowd gathered without incident in front of the Alabama State Capitol and by that time was 25,000 strong. Not long after, President Lyndon Johnson signed the Voting Rights Act into law.

The City of Montgomery is preparing to celebrate the 50th Anniversary of the Selma to Montgomery March with activities planned March 6-7, 2015 and March 23-27, 2015. The hallmark of the City’s celebration is the week of March 23-27, 2015, the Dream Marches On Youth Tour. The events are being held during the Montgomery Public School spring break as a weeklong educational tour and lectures on the events of 50 years ago. It is their intent to register 400 high school students, with preference given to high school seniors to participate in the educational camp. They will also reenact the final leg of the March from the City of St. Jude to the steps of the State Capitol on March 25, 2015 with motivational speakers offering words of wisdom to the youth participants and others gathered at the State Capitol.

The City is seeking someone to assist with planning, organizing and building consensus for the weeklong event. They identified Framework Consulting Group as a potential firm to assist the City with the educational activities for the event. The Framework Consulting Group provides, among other things, government, education, business and community consulting.

Senator Quinton Ross is a consultant with the Framework Consulting Group, the former director of Adult Education for Trenholm State Technical College and the former principal of Booker T. Washington High School. He holds a doctoral degree in education and is very active with the youth in Montgomery. Senator Ross is also an active leader in civil rights issues in Montgomery and has a professional and personal relationship with the unsung heroes and foot soldiers of this era reaching across this State. The City would like to engage Senator Ross as the City’s educational consultant through Framework Consulting Group for the period of October 1, 2014 through March 31, 2015 to assist with their planning effort.

It is important to recognize at the outset that service in the Legislature is a part-time job for most members of the Legislature and, generally, they have other primary employment. They are citizen Legislators.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-2(b) recognizes this and states:

“It is also essential to the proper operation of government that those best qualified be encouraged to serve in government. Accordingly, legal safeguards against conflicts of interest shall be so designed as not to unnecessarily or unreasonably impede the service of those men and women who are elected or appointed to do so. An essential principle underlying the staffing of our governmental structure is that its public officials and
public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.” (Emphasis added.)

Secondly in this analysis, is the fact that the City of Montgomery seeks Senator Ross’ assistance and this opportunity has not been solicited by Senator Ross.

The relevant Code Sections are as follows:

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 36-25-5(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 36-35-5(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.”
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.”

While the Ethics Law prohibits the use of one’s public office for one’s personal benefit, it does not prohibit public officeholders from having outside employment interests and opportunities; provided, that a conflict of interest does not exist.

In the facts before the Commission, the City of Montgomery has initiated the contact with Senator Ross based on his expertise, as well as the fact that he is from the Montgomery area, knows its history, and has been an active leader in civil rights issues in the City of Montgomery for many years.

While the facts as presented allow the City and Senator Ross to contract, there are qualifiers that must be set out and taken into consideration.

Specifically, Senator Ross cannot use anything belonging to the State of Alabama (or his legislative office) including but not limited to time, labor, materials or other items belonging to the public to assist him in either obtaining the consulting opportunity or in carrying out the terms of the consulting agreement. Senator Ross must keep his legislative duties totally separate and apart from his private consulting interests.

Based on the facts as provided and the above law, the City of Montgomery may enter into a contract with a Legislator to provide consulting services relating to youth activities planned for the 50th Anniversary of the Selma to Montgomery March, as the Legislator was approached by the City of Montgomery to provide the services, as well as the fact that the services contracted for fall within the Legislator’s area of expertise.

Further, a member of the Legislature, who is approached by the City of Montgomery to provide consulting services, may do so; however, he may not use any State resources under his discretion or control as a member of the Legislature to assist him in either obtaining the opportunity or in performing the consulting contract.

In addition, should the contract still be in effect when the Legislature goes back into session, should an issue relating to the consulting agreement appear before the Legislature,
Senator Ross may not vote, attempt to influence or in any manner participate in the issue if his consulting contract could potentially be affected by the legislative action.

CONCLUSION

The City of Montgomery may enter into a contract with a Legislator to provide consulting services relating to youth activities planned for the 50th Anniversary of the Selma to Montgomery March, as the Legislator was approached by the City of Montgomery to provide the services, as well as the fact that the services contracted for fall within the Legislator’s area of expertise.

A member of the Legislature, who is approached by the City of Montgomery to provide consulting services, may do so; however, he may not use any State resources under his discretion or control as a member of the Legislature to assist him in either obtaining the opportunity or in performing the consulting contract.

In addition, should the contract still be in effect when the Legislature goes back into session, should an issue relating to the consulting agreement appear before the Legislature, Senator Ross may not vote, attempt to influence or in any manner participate in the issue if his consulting contract could potentially be affected by the legislative action.

AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on October 1, 2014.

V. Larkin Martin
Acting Chair in the absence of the Chair
Alabama Ethics Commission