



# STATE OF ALABAMA ETHICS COMMISSION



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December 3, 2014

## ADVISORY OPINION NO. 2014-07

Edward A. Ted Hosp  
Maynard, Cooper & Gale, PC  
1901 Sixth Avenue North  
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Birmingham, Alabama 35203-2618

Conflict Of Interest/Sumter County  
Commission Chairman, Serving On The  
York Healthcare Authority, Voting On Issue  
Related To The Healthcare Authority

The Chairman of the Sumter County  
Commission, who serves as a member of the  
Board of Directors of the York Healthcare  
Authority, may vote on an issue related to  
funding of the Healthcare Authority, when  
there is no personal gain to the Sumter  
County Commissioner, and the action by the  
County Commission benefits the public and  
not solely the Healthcare Authority.

It should be pointed out that this opinion is  
rendered based on a specific set of facts and  
should not be interpreted to cover all similar  
situations. They will be looked at on a case-  
by-case basis.

Dear Mr. Hosp:

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 Chairman of the Sumter County Commission, who also serves as a member of the Board of Directors of the York Healthcare Authority, vote on a bond issue, whereby the County Commission would issue bonds to allow the Healthcare Authority to satisfy an outstanding tax obligation?

### **FACTS AND ANALYSIS**

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

Sumter County Commissioner Tommie Armistead was elected to represent District 4 and currently serves as Chairman of the County Commission. Commissioner Armistead also serves on the Board of Directors of the York Healthcare Authority, which operates Hill Hospital. Commissioner Armistead has served on the board of the Authority for approximately five years, having been appointed to the position by the Mayor and City Council of the City of York. Commissioner Armistead receives no compensation for the position he occupies on the Authority board. Hill Hospital is the only hospital in Sumter County, treating patients from across the County and surrounding areas. The Sumter County Commission currently subsidizes ambulance services in the County in an amount of approximately \$10,000 per month. Should the only hospital operating in the County be forced to close, the amount necessary to subsidize ambulance services would likely increase as citizens would be required to be transported significantly further than the City of York.

The Authority is facing an obligation to satisfy unpaid payroll taxes that were left unpaid by the payroll management company used by the hospital. To satisfy this outstanding obligation, the Authority will need as much as \$1.5 million. The Sumter County Commission is considering issuing bonds in order to allow the hospital to satisfy the outstanding debt. As part of the transaction, the Commission would enter into a funding agreement with the Authority, pursuant to which the hospital will pay \$5,000 per month to the County Commission to retire the debt. In addition to this amount, the Authority will also remit overages collected on its portion of the City sales tax imposed as part of a 2011-2012 bond issue. This overage amounts to approximately \$25-\$30,000 per year. The funds paid to the County through the monthly \$5,000 payment and annual overage amounts would be paid until the full debt on the bonds has been retired.

Commissioner Armistead would like to participate in the discussion, deliberations and decision-making process as the County Commission considers what course of action to take with regard to Hill Hospital. He has some concerns, however, that because he serves on the Board of the Healthcare Authority, he could be viewed as precluded by the Ethics Act from taking any action on this issue as a Commissioner. The issue is whether or not this particular fact pattern creates a conflict of interest under the Ethics Law.

Commissioner Armistead will not personally benefit in any way from any action undertaken by Sumter County to assist the hospital. As noted above, he serves on the Healthcare Authority without compensation. He has no ownership interest or investment in the hospital or the Authority, and is under no obligation with regard to the debt or operating expenses of the hospital.

Secondly, his role with regard to the hospital and the Authority is not inconsistent with his role as a County Commissioner. The hospital, the only hospital in the county, serves all of the citizens of Sumter County. Commissioner Armistead believes that it is in the best interest of the County, the County Commission and the citizens of Sumter County to maintain the viability of Hill Hospital.

Finally, it is unclear whether or not the Healthcare Authority, a quasi-public or governmental entity, was intended to be considered as a “business with which the person is associated.”

Based on this scenario, Commissioner Armistead requests this Advisory Opinion.

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(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 36-25-1(1) defines a business as:

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

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 36-25-5(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 36-25-9(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.”

This opinion will address the second issue first. A business as listed above, appears to be all inclusive. The definition sets out several organizations which are clearly businesses and includes the language, “...or any other legal entity.”

This definition is somewhat more tightly defined in the definition of “governmental corporations and authorities.” Section 36-25-1(16) defines a governmental corporation 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. Notwithstanding the foregoing, all employees, including contract employees, of hospitals or other health care corporations and authorities are exempt from the provisions of this chapter.”

The York Healthcare Authority, as a healthcare corporation, clearly meets the definition of a governmental corporation. A governmental corporation is not included in the definition of a business.

Therefore, arguably at least, a healthcare corporation is not a business with which the person is associated.

More important to this inquiry, however, is the issue of personal gain. Commissioner Armistead has no financial interest in, nor receives any compensation from his service on the York Healthcare Authority. Any action taken by the County Commission would in no way affect Commissioner Armistead. In fact, all benefits accruing from the action would benefit the citizens of Sumter County, as well as other residents of the State of Alabama who avail themselves of the services of Hill Hospital.

Based on the overriding public interest issue, the question of whether or not the Healthcare Authority is or is not a business with which Commissioner Armistead is associated, is not important to this analysis.

It should be pointed out that this opinion is rendered based on a specific set of facts and should not be interpreted to cover all similar situations. They will be looked at on a case-by-case basis.

Based on the facts as provided, and the above law, the Chairman of the Sumter County Commission, who also serves as a Director of the York Healthcare Authority, may vote on a bond issue affecting the retirement of an outstanding debt of the Healthcare Authority, when he is not personally benefitting by his actions and all benefits from his actions will ultimately accrue to the citizens of Sumter County.

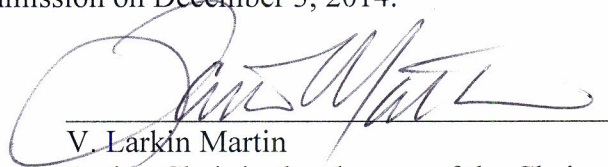
### **CONCLUSION**

The Chairman of the Sumter County Commission, who serves as a member of the Board of Directors of the York Healthcare Authority, may vote on an issue related to funding of the Healthcare Authority, when there is no personal gain to the Sumter County Commissioner, and the action by the County Commission benefits the public and not solely the Healthcare Authority.

It should be pointed out that this opinion is rendered based on a specific set of facts and should not be interpreted to cover all similar situations. They will be looked at on a case-by-case basis.

**AUTHORITY**

By 4-0 vote of the Alabama Ethics Commission on December 3, 2014.

A handwritten signature in black ink, appearing to read "V. Larkin Martin", is written over a horizontal line. The signature is fluid and cursive.

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