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June 6, 2018

ADVISORY OPINION NO. 2018-05

Mr. John A. Tinney
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Personal Use of Equipment/Water Board
employee taking children to school.

An employee of the Ashland Water Board may drop his children off at daycare on his way to work in his official vehicle if the use requested is allowed "pursuant to a lawful employment agreement regulated by agency policy."

Dear Mr. Tinney:

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

FACTS

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

“The Ashland Water Board has a vehicle which it provides to an employee which the employee keeps for transportation for matters relating to the Water Board. He is allowed by agreement with the Water Board to have possession of this vehicle at all times and utilizes the vehicle in traveling to and from work.

There are times when he might be called out at night should there be a water main break, etc. when he would be required to attend to Water Board business after hours.

This employee has children still in school in Ashland. He occasionally will drop the children off on his way to work in the Water Board vehicle. The dropping off of the children is not out of the way on his way to work and I am sure that the additional gas used in dropping off the children is minimal.

The question has arisen as to whether it is a violation of Alabama Ethics statutes for this individual to drop off the children on his way to work in the company vehicle.”

QUESTION PRESENTED

Is it a violation of Alabama Ethics statutes for an employee of the Ashland Water Board to drop off the children on his way to work in the vehicle supplied to him for his official use?

ANALYSIS

The primary issues which the question raises involve the application of Ala. Code § 36-25-5(a) and (c), which state:

(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.

(c) 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.

The Commission previously addressed this issue under similar facts. In Advisory Opinion 2011-08 (Pettaway), the Commission held, "The Perry County Commission may, by policy, allow the Perry County Coroner to use a County vehicle for personal, as well as business use, so he may be accessible when needed." In that Opinion, the Commission recognized the practical implications of prohibiting someone who is on-call from being able to conduct errands, etc., while in an official vehicle but only when it is allowed pursuant to a lawful employment agreement regulated by agency policy. That conclusion equally applies to the question and facts presented, and the use requested herein is allowed if "provided pursuant to a lawful employment agreement regulated by agency policy."

CONCLUSION

An employee of the Ashland Water Board may take his children to school on his way to work in his official vehicle if the use requested is "provided pursuant to a lawful employment agreement regulated by agency policy."

AUTHORITY

By 3-1 vote of the Alabama Ethics Commission on June 6, 2018.



Jerry L. Fielding, Ret. Sr. Circuit Judge
Chair
Alabama Ethics Commission