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April 30, 1997



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RECONSIDERATION OF ADVISORY OPINION NO. 95-107

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Ms. Joyce M. Brown
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Conflict Of Interests/ President Of Corporation Serving
As Board Member For City School Board And Doing
Business With The School System.

A business owned by a member of the Board of
Education may do business with the Cullman City School
System; provided, all competitive bid laws are strictly
adhered to; that no confidential information obtained in
the course of his service as a School Board Member be
used to influence the bid process; and that the School
Board Member not otherwise use or attempt to use his
position on the School Board to obtain business for his
office supply company.

Should the purchases made by the School Board System
be outside the competitive bid laws, the School Board
Member may sell school supplies to the School System at
invoice price and may not make a profit off the sale.

An office supply company owned by a member of the
School Board may respond to bid requests sent by the
School; provided, all competitive bid laws are strictly
adhered to; and that the Board Member not use his
position to influence or attempt to influence the outcome
of the bid or contract compliance process; and provided
further, that a copy of the contract is filed with the Ethics
Commission within 10 days after the contract has been
entered into.

A company owned by a School Board Member may
continue to provide service contracts for equipment
purchased prior to becoming an elected School Board
Member under the terms of the original contract.

A company owned by a School Board Member may continue to repair and service equipment purchased prior to his becoming an elected School Board Member under the terms of the original contract.

Dear Ms. Brown:

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 ON RECONSIDERATION

1. Is it legal for schools to purchase supplies from Mr. Krep's company if the items are bought with a purchase order?
2. Is it legal for the company owned in-part by Mr. Krep to respond to bid requests sent by the schools in accordance with the State bid law?
3. Is it legal for Mr. Krep's company to repair and service equipment purchased prior to his becoming an elected School Board Member, for example, typewriters, calculators, copy machines, etc.?

FACTS AND ANALYSIS

On December 6, 1995, the Alabama Ethics Commission issued Advisory Opinion No. 95-107, which held in pertinent part that a person may not serve as a member of a Board of Education and continue to do business with the School System. The opinion further held that a company owned in-part by a School Board Member may not respond to a bid request sent by the school in accordance with the State bid law.

On November 22, 1996, Joyce Brown, Superintendent of the Cullman City Schools requested reconsideration of this opinion. The facts provided are as follows:

Cullman City Schools has five elected Board Members. One of the elected Board Members is Richard L. Krep, who holds an interest in the family business, Office Equipment Co., Inc. Ms. Brown requested that the Ethics Commission review its ruling on purchasing from a company in which a Board Member holds an interest, since the Commission has had the opportunity to apply the regulation to similar cases. Office Equipment Company was incorporated in 1967 in the State of Alabama, and Mr. Krep presently serves as President of the corporation, but does not own 51 percent of the stock.

Ms. Brown, on behalf of the School System, would very much like to have Office Equipment Company bid on the school and office supplies they purchase in order to have a more competitive market. She states that Cullman is limited in companies that supply office supplies, and they try to purchase locally whenever possible. Therefore, it is her hope that they will be able to do business with Mr. Krep's

company for convenience and because they have always been ethical, fair, and reasonable in providing materials, supplies, and service to their school.

Since the amended Alabama Ethics Law went into effect on October 1, 1995, the Ethics Commission has had numerous opportunities to visit the questions presented above.

In interpreting and putting into effect the amended Ethics Law, the Ethics Commission has repeatedly cited Section 36-25-2(b) which states as follows:

"(b) 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."

One of the responsibilities of the Ethics Commission is to balance the policies set forth in the above section with the responsibility of preventing public employees or public officials from being able to use their official position for personal gain.

The Alabama Ethics Law, Code of Alabama, 1975, 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."

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(2) states:

"BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. 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(8) states:

"CONFLICT OF INTEREST. 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 36-25-11 states:

"Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into."

Section 36-25-2(3) states:

"No public office should be used for private gain other than the remuneration provided by law."

Section 36-25-8 states:

"No public official, public employee, former public official or former public employee, for a period consistent with the Statute of Limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business."

Based on the facts as presented and the above law, a business owned in-part by a member of a School Board may do business with that School Board under the following conditions:

1. That all competitive bid laws are strictly adhered to;
2. That the Board Member not use any confidential information obtained in the course of his

service on the School Board in any manner to influence or attempt to influence the bid process;

3. That the Board Member not vote, attempt to influence, or otherwise participate in either the bid process or the contract compliance process;

4. Should the purchase fall outside the parameters of the competitive bid laws, the business owned by the School Board Member may sell school supplies to the schools within the system at their invoice price and may not make a profit on the sale.

CONCLUSION

A business owned by a member of the Board of Education may do business with the Cullman City School System; provided, all competitive bid laws are strictly adhered to; that no confidential information obtained in the course of his service as a School Board Member be used to influence the bid process; and that the School Board Member not otherwise use or attempt to use his position on the School Board to obtain business for his office supply company.

Should the purchases made by the School Board System be outside the competitive bid laws, the School Board Member may sell school supplies to the School System at invoice price and may not make a profit off the sale.

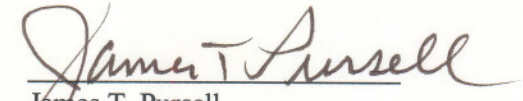
An office supply company owned by a member of the School Board may respond to bid requests sent by the School; provided, all competitive bid laws are strictly adhered to; and that the Board Member not use his position to influence or attempt to influence the outcome of the bid or contract compliance process; and provided further, that a copy of the contract is filed with the Ethics Commission within 10 days after the contract has been entered into.

A company owned by a School Board Member may continue to provide service contracts for equipment purchased prior to becoming an elected School Board Member under the terms of the original contract.

A company owned by a School Board Member may continue to repair and service equipment purchased prior to his becoming an elected School Board Member under the terms of the original contract.

AUTHORITY

By 3 - 1 vote of the Alabama Ethics Commission on April 30, 1997.


James T. Pursell
Chair
Alabama Ethics Commission